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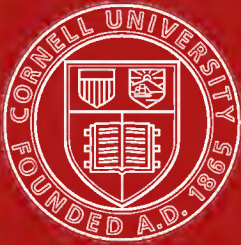
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The Tax Laws of Ohio

COMPILED AND ISSUED

BY

The Tax Commission of Ohio

Issued June, 1916



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OFFICE
OF THE
TAX COMMISSION OF OHIO
COLUMBUS

This compilation is issued, by the Tax Commission of Ohio, in compliance with the requirements of Section 5624-6 of the General Code (106 Ohio L., 224). In arranging it, the arbitrary divisions of the General Code, as adopted by the Codifying Commissioners in 1910 in their revision of the statutes, have not been closely followed, but the laws relating to taxation have been grouped into convenient chapters, each containing as nearly as practicable all the provisions relating to the subject of the chapter, without regard for their sectional numbering. Where this was not always practicable and in order to avoid duplication of sections cross references have been inserted. A general table of all the sections contained arranged in numerical order as well as a topical index are included. In making the annotations only those of a general character have been included, but particular attention has been paid to the opinions of the Attorney General, which are of peculiar importance since the enactment of Section 5623, G. C. (106 Ohio L., 265) to the effect that such opinions shall be binding upon the Tax Commission and other officers until the same be changed by the courts.

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ABBREVIATIONS.

Attorney General's Report.....	A. G. R. (Year)
American Law Record.....	Am. L. Rec.
American Law Register.....	Am. L. Reg.
Cincinnati Superior Court.....	C. S. C. R.
Cleveland Law Record.....	Clev. L. Rec.
Cleveland Law Reporter.....	Clev. L. Rep.
Dayton (Laning)	Dayton.
Dayton Term Report (Iddings).....	Dayton Term Rep. (Iddings).
Disney	D.
Federal	Fed.
Goebel	Goebel.
Handy	H.
Hosea	Hosea.
Ohio	O.
Ohio Appellate	App.
Ohio Circuit Court.....	O. C. C.
Ohio Circuit Court, New Series.....	O. C. C. (N. S.)
Ohio Circuit Decisions.....	O. C. D.
Ohio Decisions (S. & C. P.).....	O. D. (N. P.)
Ohio Decisions, Reprint.....	Dec. Rep.
Ohio Federal Decisions.....	O. F. D.
Ohio Nisi Prius.....	O. N. P.
Ohio Nisi Prius, New Series.....	O. N. P. (N. S.)
Ohio Law Journal.....	Ohio L. J.
Ohio Law Reporter.....	O. L. R.
Ohio State	O. S.
Tappan	T.
United States	U. S.
United States Circuit Court of Appeals.....	C. C. A.
Warden's Weekly Law and Bank Bulletin.....	1 Gaz.
Weekly Law Bulletin.....	Bull.
Weekly Law Gazette.....	Gaz.
Western Law Journal.....	W. L. J.
Western Law Monthly.....	W. L. M.
Wright	W.
Warnes Law	W. L.

THE TAX LAWS OF OHIO

CHAPTER ONE.

ASSESSING OFFICERS.

THE TAX COMMISSION OF OHIO.

SECTION		SECTION	
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1465-16.	Penalty for disclosure of information.	1465-34.	Transcript of records for commission.
1465-17.	Decision.	1465-35.	Report to governor and general assembly.
1465-18.	Return and answer by firm, company, corporation, etc.	1465-36.	Definitions.

Creation of commission.

SEC. 5445. A tax commission is hereby created, to be known as the tax commission of Ohio, to be composed of three commissioners, electors of the state, not more than two of whom shall be of the same political party.

On or before July first, 1910, the governor shall appoint such commissioners as follows: the term of one such appointee, who shall belong to the same political party as one of the other members appointed on such commission, if there be two appointees from the same political party, shall terminate on the second Monday of February, 1911; the term of the second such appointee shall terminate on the second Monday of February, 1912; the term of the third such appointee shall terminate on the second Monday of February, 1913. In February, 1911, and annually thereafter, in the month of February, there shall be appointed in the same manner, one commissioner for the term of three years, from the second Monday of February of such year.

Each commissioner so appointed shall hold his office until a successor is appointed and qualified. Any vacancy on the commission shall be filled by appointment of the governor for the unexpired term. No appointee shall be qualified to act until after his appointment has been confirmed by the senate, unless appointed during a recess or adjournment of the senate. (101 v. 399 § 1.)

Appointment.

SEC. 1465-1. Between the first day and the second Monday of February, 1913, and biennially thereafter, the governor shall appoint one member of the tax commission of Ohio for the term of six years from the second Monday of February of such year.

HISTORY. — 102 v. 224, § 1. For an analogous statute, see G. C. § 5445 in 101 v. 399, § 1, and § 5445 (original numbering), which was R. S. §§ 2778a, 2780-9, 2780-14; 91 v. 221: 90 v. 331; 92 v. 89, § 3; 91 v. 408, § 3; and G. C. § 5485 (original numbering), which was R. S. § 2780-19; 92 v. 79, § 3; 95 v. 138; 97 v. 326.

Same Subject.

SEC. 1465-1 (supplemental.) That within fifteen days after the passage of this act the governor is hereby authorized to appoint one member of the tax commission of Ohio, to serve for the term of three years, commencing at the expiration of the term now held by the incumbent whose term will expire the second Monday in February, 1914. And that thereafter appointments to said commission shall be made in compliance with section 1465-1 of the General Code. 104 v. 199.

Removal.

SEC. 1465-2. The governor shall at any time remove any commissioner for inefficiency, neglect of duty or malfeasance in office.

HISTORY. — 102 v. 224, § 2. For an analogous statute, see G. C. § 5446 in 101 v. 399, § 2.

Must devote entire time to office.

SEC. 1465-3. Each commissioner and each employe shall devote his entire time to the duties of his office, and shall not hold any position of trust or profit, engage in any occupation or business interfering with or inconsistent with his duty as such commissioner or employe, or serve on or under any committee of any political party.

HISTORY. — 102 v. 224, § 3. For an analogous statute, see G. C. § 5447, in 101 v. 399, § 3.

Sessions of Commission; records.

SEC. 1465-4. The commission shall be in continuous session and open for the transaction of business during all the business hours of each day and every day, excepting Sundays and legal holidays. All sessions shall be open to the public, and sessions of the commission shall stand and be adjourned without further notice thereof on its records. All of the proceedings of the commission shall be shown on its record of proceedings, which shall be a public record, and all voting shall be by calling each member's name by the secretary and each member's vote shall be recorded on the record of proceedings as cast.

HISTORY. — 102 v. 224, § 4. For analogous statute, see G. C. § 5448, in 101 v. 399, § 4.

Oath of office.

SEC. 1465-5. Before entering upon the duties of his office each commissioner shall take and subscribe the constitutional oath of office and shall swear or affirm that he holds no other office of profit, or any position under any committee of a political party; which oath or affirmation shall be filed in the office of the governor.

HISTORY. — 102 v. 224, § 5. For analogous statute, see G. C. § 5449, in 101 v. 399, § 5.

Salary of tax commissioners.

SEC. 2250-1. Each of the members of the tax commission of Ohio shall receive an annual salary of four thousand dollars, payable in the same manner as salaries of state officers are paid.

HISTORY. — 106 v. 28. For analogous statutes, see G. C. § 5450 in 101 v. 399, § 6, 102 v. 224, § 6.

Quorum; when one member may act.

SEC. 1465-6. A majority of the commission shall constitute a quorum to transact business, and any vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the commission so long as a majority remains. Any investigation, inquiry or hearing which the commission is authorized to hold or undertake may be held or undertaken by or before any one member of the commission. All investigations, inquiries, hearings and decisions of the commission, and every order made by a commissioner, when approved and confirmed by the commission, and so shown on its record of proceedings shall be deemed to be the order of the commission.

HISTORY. — 102 v. 224, § 7. For analogous statute, see G. C. § 5451, in 101 v. 399, § 7.

Official seal.

SEC. 31-1. The commission shall have an official seal, with the words "The Tax Commission of Ohio" and such other design as the commission may prescribe engraved

thereon, by which it shall authenticate its proceedings and of which the courts shall take judicial notice.

HISTORY.—102 v. 224, § 8. For analogous statute, see G. C. § 5452, in 101 v. 399.

Office, rooms and furniture.

SEC. 1465-7. The commission shall keep its office in the city of Columbus, and shall provide a suitable room or rooms, necessary office furniture, supplies, books, periodicals and maps. All necessary expenses shall be audited and paid as other expenses are audited and paid. The commission may hold sessions at any place within the state.

HISTORY.—102 v. 224, § 9. For analogous statute, see G. C. § 5453, in 101 v. 399, § 9.

Secretary, examiners, clerks, etc.; Expenses.

SEC. 1465-8. The commission is authorized to employ a secretary, examiners, experts, clerks, accountants, stenographers and other assistants and to fix their compensation. Such employments and compensation therefor shall be first approved by the governor. The commissioners, secretary, experts, clerks, accountants, stenographers and other assistants that may be employed, shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the commission. Such expenses shall be itemized and sworn to by the person who incurred the expense and allowed by the commission.

HISTORY.—102 v. 224, § 10. For an analogous statute, see G. C. § 5454, in 101 v. 399, § 10.

Attorney general or prosecuting attorney shall aid in investigations or hearings.

SEC. 1465-9. Upon the request of the commission the attorney general, or under his direction, the prosecuting attorney of any county, shall aid in any investigation, hearing or trial had under the laws which the commission is required to administer, and to institute and prosecute all necessary actions or proceedings for the enforcement of such laws, and for the punishment of all violations thereof, arising within the county in which he was elected.

HISTORY.—102 v. 224, § 11. For an analogous statute, see R. S. § 5455, in 101 v. 399, § 11.

The tax commission of Ohio is in no way concerned with the appointment of executors and administrators of estates. A. G. R. 1915, p. 2430.

Rules and regulations.

SEC. 1465-10. The commission shall adopt reasonable and proper rules and regulations to govern its proceedings and to regulate the mode and manner of all valuations of real or personal property, apportionments, investigations, inspections and hearings not otherwise specifically provided for.

HISTORY.—102 v. 224, § 12. For an analogous statute, see G. C. § 5456, in 101 v. 399, § 12.

May confer with officers of other states.

SEC. 1465-11. The commission may confer and meet with officers of other states and officers of the United States on any matter pertaining to its official duties.

HISTORY.—102 v. 224, § 13. For an analogous statute, see G. C. § 5457, in 101 v. 399, § 13.

Inspection of books, records, etc.

SEC. 1465-12. To carry out the purposes of the laws which it is required to administer, the commission, or any commissioner, or any person or persons employed by the commission for that purpose, shall, upon demand, have the right to inspect books, accounts, records and memoranda of any company, firm, corporation, person, association, co-partnership or public utility, subject to the provisions of such laws, and to examine under oath any officer, agent or employee of any such company, firm, corporations, person, association, co-partnership or public utility. Any person, other than one of such commissioners, who shall make such demand, shall produce his authority to make such inspection.

HISTORY.—102 v. 224, § 14. For an analogous statute, see G. C. § 5458, in 101 v. 399, § 14.

Power to require production of books, etc., by order or subpoena; Penalty.

SEC. 1465-13. The commission may require, by order or subpoena, to be served on any such company, firm, corporation, person, association, co-partnership or public utility, in the same manner that a summons is served in a civil action in the court of common pleas, the production, within this state, at such time and place as it may designate, of any books, accounts, papers or records kept by it in any office or place within or without the state of Ohio, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission or under its direction. Any such company, firm, corporation, person, association, co-partnership or public utility, failing or refusing to comply with any such order or subpoena, shall, for each day it so fails or refuses, forfeit and pay into the state treasury a sum of not less than fifty dollars nor more than five hundred dollars.

HISTORY.—102 v. 224, § 16. For analogous sections, see G. C. § 5459, in 101 v. 399, § 16, and G. C. § 6457 (original numbering), which was R. S. § 2779.

Agent.

SEC. 1465-14. For the purpose of making any investigation with regard to any company, firm, corporation, person, association, co-partnership or public utility, subject to the provisions of the laws which the commission is required to administer, the commission shall have power to appoint, by an order in writing, an agent whose duties shall be prescribed in such order.

HISTORY.—102 v. 224, § 16. For an analogous statute, see G. C. § 6460, in 101 v. 399, § 16.

Powers of agent.

SEC. 1465-15. In the discharge of his duties such agent shall have every power whatsoever of an inquisitorial nature granted by law to the commission and the same powers as a notary public, with regard to the taking of depositions; and all powers given by law to a notary public relative to depositions are hereby given to such agent.

HISTORY.—102 v. 224, § 17. For an analogous statute, see G. C. § 5461, in 101 v. 399, § 17.

Penalty for disclosure of information.

SEC. 1465-16. Except in his report to the commission, or when called on to testify in any court or proceeding, any such agent who shall divulge any information acquired by him in respect to the transactions, property or business of any company, firm, corporation, person, association, co-partnership, or public utility, while acting or claiming to act under such order, shall be fined not less than fifty dollars nor more than one hundred dollars, and shall thereafter be disqualified from acting as agent or in any other capacity under the appointment or employment of the commission.

HISTORY.—102 v. 224, § 18. For an analogous statute, see G. C. § 5461, in 101 v. 399, § 17.

Decision.

SEC. 1465-17. The commission may conduct any number of such investigations, contemporaneously, through different agents, and may delegate to any agent the taking of all testimony bearing upon any investigation or hearing. The decision of the commission shall be based upon its examination of all testimony and records. The recommendations made by an agent shall be advisory only, and shall not preclude the taking of further testimony, if the commission so order, nor further investigation.

HISTORY.—102 v. 224, § 19. For an analogous statute, see G. C. § 5462, in 101 v. 399, § 18.

Returns and answers by firm, company, corporation, etc.

SEC. 1465-18. Each company, firm, corporation, person, association, co-partnership or public utility, shall furnish the commission in the form of returns prescribed by it all information required by law and all other facts and information in addition to the facts and information in this act specifically required to be given, which the commission may require to enable it to carry into effect the provisions of the laws which the commission is required to administer, and shall make specific answers to all questions submitted by the commission.

HISTORY.—102 v. 224, § 20. For an analogous statute, see G. C. § 5463, in 101 v. 399, § 19.

Reason in writing for failure to answer.

SEC. 1465-19. Any such company, firm, corporation, person, association, co-partnership or public utility, receiving from the commission any blanks with directions to fill them, shall cause them to be properly filled out so as to answer fully and correctly each question therein propounded, and in case it is unable to answer any question, it shall, in writing, give a good and sufficient reason for such failure.

HISTORY.—102 v. 224, § 21. For an analogous statute, see G. C. § 5464, in 101 v. 399, § 20.

Verification of answers.

SEC. 1465-20. The answers to such questions shall be verified under oath by such person or by the president, secretary, superintendent, general manager, principal accounting officer, partner or agent, and returned to the commissioner at its office, within the period fixed by the commission.

HISTORY.—102 v. 224, § 22. For an analogous statute, see G. C. § 5464, in 101 v. 399, § 20.

Who empowered to administer oath.

SEC. 1465-21. Each commissioner, the secretary and every agent provided for in this act, for the purposes therein mentioned, shall have power to administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents and testimony.

§ 14.
HISTORY.—102 v. 224, § 23. For analogous sections, see G. C. § 5458, in 101 v. 399, § 14.

Proceedings for contempt, for refusal or disobedience.

SEC. 1465-22. In case of disobedience on the part of any person or persons, to comply with an order of the commission or a commissioner, or subpoena, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated before the commission, or its agents, authorized as provided by law, the court of common pleas of the county in which the person resides, or a judge thereof, on application of a commissioner, shall compel obedience by attachment proceedings as for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

HISTORY.—102 v. 224, § 24. For analogous statutes, see G. C. §§ 5458, in 101 v. 399, § 14, and 5466, in 101 v. 399, § 22, and G. C. § 5458 (original numbering).

Fees, mileage, etc.

SEC. 1465-23. Each officer who serves a summons or subpoena shall receive the same fees as a sheriff, and each witness who shall appear before the commission, by its order, shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in courts of common pleas, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers approved by the chairman of the commission. No witness subpoenaed at the instance of parties other than the commission, shall be entitled to compensation from the state for attendance or travel, unless the commission shall certify that his testimony was material to the matter investigated.

HISTORY.—102 v. 224, § 25. For an analogous statute, see G. C. § 5467, in 101 v. 399, § 28.

Expenses, witness fees, etc.; how paid.

SEC. 1465-24. A person who shall appear before the commission by its order, with respect to the appraisal of property in any taxing district, shall be allowed and paid out of the treasury of the proper county, if an officer of any such taxing district or a member of any annual or quadrennial county board of equalization or county board of revision, or city board of review, his actual and necessary traveling expenses, such expenses to be itemized and sworn to by the person who incurred the expense; and if other than any such officer or member of any such board, he shall receive for his attendance the fees and mileage provided in the next preceding section. Such traveling expenses and witness fees shall be audited and paid out of the county treasury of the proper county, in the same manner as other expenses are audited and paid, upon the presentation of a certificate from the commission certifying to the fact of such attendance.

HISTORY.—102 v. 224, § 26. For a similar section, see G. C. § 5466-1; 102 v. 28.

Witness fees, mileage, etc.

SEC. 5466-1. A person who shall appear before the tax commission, by its order, with respect to the appraisal of property in any taxing district, shall be allowed and paid out of the treasury of the proper county, if an officer of any such taxing district or a member of any board mentioned in section 5542-9a, his actual and necessary traveling expenses, such expenses to be itemized and sworn to by the person who incurred the expense, and if other than any such officer or member of any such board he shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in the courts of common pleas. Such traveling expenses and witness fees shall be audited and paid out of the county treasury of the proper county in the same manner as other expenses are audited and paid, upon the presentation of a certificate from the tax commission certifying to the fact of such attendance.

HISTORY.—102 v. 28. For an analogous section, see G. C. Sec. 1465-24, (102 v. 224, § 26) which probably repeals this section.

Expenses; how paid.

SEC. 5624-7. Any expense incurred by the tax commission of Ohio, with respect to the annual assessment of real and personal property in any district, shall be paid out of the treasury of the county in which such district may be located, upon presentation of the order of the tax commission of Ohio certifying the amount thereof to the county auditor, who shall thereupon issue his warrant therefor upon the general fund of the county, directed to the county treasurer, who shall pay the same. All moneys paid out of the county treasury under authority of this section and section 1456-24 of the General Code shall be charged against the proper district, and amounts so paid by the county shall be retained by the county auditor from funds due such district at the time of making the semi-annual distribution of taxes. 106 v. 268, § 82.

Depositions.

SEC. 1465-25. In an investigation the commission or any party, may cause depositions of witnesses, residing within or without the state, to be taken in the manner prescribed by law for like depositions in civil actions in courts of common pleas.

HISTORY.—102 v. 224, § 27. For an analogous statute, see G. C. § 5468, in 101 v. 399, § 24.

Stenographer's copy of testimony and proceedings shall be received in evidence.

SEC. 1465-26. A transcribed copy of the evidence and proceedings, or any specific part thereof, on any investigation, taken by the stenographer appointed by the commission, being certified by such stenographer to be a true and correct transcript of all the testimony on the investigation, or of a particular witness, or of a specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigations so purporting to be taken and transcribed, shall be received in evidence with the same effect as if such reporter were present and testified to the facts so certified. A copy of such transcript shall be furnished on demand to any party upon the payment of the fee therefor, as provided for transcripts in courts of common pleas.

HISTORY.—102 v. 224, § 28. For an analogous statute, see G. C. § 5469, in 101 v. 399, § 25.

Production of testimony.

SEC. 1465-27. No person shall be excused from testifying or from producing accounts, books and papers in any proceedings based upon or growing out of any violation of the provisions of the laws which the commission is required to administer, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to penalty or forfeiture, but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for, or on account of any transaction, matter or thing concerning which he may have testified or produced any documentary evidence; but no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

HISTORY.—102 v. 224, § 29. For an analogous statute, see G. C. § 5470, in 101 v. 399, § 26.

Blanks.

SEC. 1465-28. The commission shall cause to be prepared suitable blanks for carrying out the purpose of the laws which it is required to administer, and, on application,

furnish such blanks to each company, firm, corporation, person, association, co-partnership or public utility, subject thereto.

The commission, when it deems the same necessary or advisable, may extend to any corporation or public utility a further specified time not to exceed ninety days within which to file any report required by law to be filed with the commission in which event the attaching or taking effect of any penalty for failure to file such report or pay any tax or fee shall be extended or postponed accordingly.

HISTORY. — 102 v. 224, § 30. For a similar section, see G. C. § 5516-1; 102 v. 28. For analogous sections, see G. C. § 5477, in 101 v. 399, § 3.

Extension of time.

SEC. 5516-1. The tax commission of Ohio, when it deems the same necessary or advisable, may extend to any corporation or public utility, a further specified time within which to file any report required by law to be filed with the tax commission, in which event the attaching or taking effect of any penalty for failure to file such report or pay its tax or fee into the state treasury shall be extended or postponed accordingly.

HISTORY. — 102 v. 28. For an analogous section, see G. C. § 1465-28 (102 v. 224).
See 1465-28 G. C. § 30 Tax Commission Act of June 1, 1911 which probably repeals this section.

Other information.

SEC. 1465-29. If any company, firm, corporation, person, association, co-partnership or public utility, subject to the provisions of this act, fails or refuses to make out and deliver to the commission any statement required by law, or furnish the commission with any information requested, the commission shall inform itself as best it may on the matters necessary to be known in order to discharge its duties.

HISTORY. — 102 v. 224, § 31. For an analogous statute, see G. C. § 5542-16, in 101 v. 399, § 114.

Service.

SEC. 1465-30. Every order or notice, service of which is required, shall be served upon the person or corporation to be affected thereby, either by personal delivery of a certified copy thereof, or by mailing a certified copy thereof, by registered mail, to the person to be affected thereby, or in case of a corporation, to any officer or agent thereof upon whom a summons may be served. Within the time specified in the order of the commission every person or corporation upon whom it is served, if so required by the order, shall notify the commission, in like manner, whether the terms of the order are accepted and will be obeyed.

HISTORY. — 102 v. 224, § 32. For an analogous statute, see G. C. § 5542-20, in 101 v. 399, § 118.

Injunction.

SEC. 1465-31. No injunction shall issue suspending or staying any order, determination or direction of the commission, or any action of the auditor of state, treasurer of state, or attorney general, required by law to be taken in pursuance of any such order, determination or direction, but nothing herein shall affect any right or defense in any action to collect any tax or penalty.

HISTORY. — 102 v. 224, § 33. For an analogous statute, see G. C. § 5542-21, in 101 v. 399, § 119.

Prior to this statute equity could issue an injunction to restrain the Ohio tax commission from taxing corporations under the excise law: *Railroad v. Poland*, 10 O. N. P. (N. S.) 617.

Mandamus.

SEC. 1465-32. In addition to the other remedies provided for by law the prevention and punishment of any violation of the laws which it is required to administer, and the orders of the commission, the provisions of such laws and such orders may upon the application of the commission be enforced by proceedings in mandamus, injunction or other appropriate proceeding.

HISTORY. — 102 v. 224, § 34. For an analogous statute, see G. C. § 5542-22, in 101 v. 399, § 120.

Further powers of commission.

SEC. 1465-33. All powers, duties and privileges imposed and conferred upon any state board, which board was abolished or its powers in whole or in part conferred upon

the tax commission of Ohio, by an act of the general assembly, passed May 10, 1910, or any power or duty theretofore conferred upon any state or county officer or board, which power and duty by such act was conferred upon such commission, is hereby imposed and conferred upon the commission created by such act.

Provided further that the auditor of state, treasurer of state, attorney general and secretary of state shall constitute a board of appraisers and assessors with the power to appoint boards of review in municipalities as provided in sections fifty-six hundred and eighteen to fifty-six hundred and twenty-four inclusive of the General Code.

HISTORY.—102 v. 224, § 35. For an analogous statute, see G. C. § 5542-17, in 101 v. 399, § 115.

Board of appraisers and assessors, abolished.

SEC. 5593. The board of appraisers and assessors provided for in subsection 33 of section 1465 of the General Code, is hereby abolished. (103 v. 791, Sec. 15.)

Transcript of records for commission.

SEC. 1465-34. When called upon by any officer, board or commission, now existing or hereafter created, of the state or any political division thereof, the commission shall furnish any data or information to such officer, board or commission, and shall, so far as possible, aid and assist such officer, board or commission in performing the duties of his or its office. All state, county and local officers shall make and forward to the commission, upon its written order, such transcripts of records, or parts thereof and other information on file in their respective offices or in their possession, as are deemed necessary by the commission to properly and effectually carry into operation the provisions of the laws which the commission is required to administer.

HISTORY.—102 v. 224, § 36. For an analogous statute, see G. C. § 5542-18, in 101 v. 399, § 116.

Annual report.

SEC. 1465-35. In its annual report the commission shall include a full report of the operation and execution of all laws which it is required to administer.

HISTORY.—106 v. 512. For analogous statutes, see G. C. § 1465-35, 102 v. 224, § 37, and § 6614, in 101 v. 399, § 70.

Definitions.

SEC. 1465-36. The term "commission" or the term "tax commission" when used in this act or in the laws which the commission is required to administer, means the tax commission of Ohio. The term "commissioner" means one of the members of such commission.

HISTORY.—102 v. 224, § 38. For an analogous statute, see G. C. § 5471, in 101 v. 399, § 27.

CHAPTER TWO.

ASSESSING OFFICERS. (Continued)

GENERAL PROVISIONS, RELATING TO POWERS OF THE TAX COMMISSION.

SECTION		SECTION	
5461.	How valuations determined on failure of report.	5624-1.	Blank forms shall be prescribed and furnished by tax commission.
5517.	Commission may review findings.	5624-2.	Enforcement of rules, regulations, etc.
20-1.	Correction of errors in taxes or other charges.	5624-3.	Conference of assessment officers.
20-1.	Refunding taxes paid by mistake.	5624-6.	Compilation and publication of tax laws.
5522.	Affidavit as to political contributions.	5624-8.	Commission entitled to be heard in any court.
5522.	Affidavit made part of return.	5624-9.	Remedy of improper administration of tax laws.
5524.	Compromise of claims for delinquent taxes.	5624-10.	Remission of taxes and penalties.
5623.	Decision of tax commission binding.	5624-11.	Notice and report of the remission of taxes and penalties.
5624.	Rules and regulations shall be prescribed by the commission, and enforce observance.		

How valuations determined on failure of report or statement; domestic corporations; foreign corporations; sleeping car or freight line; power extends to preceding years.

SEC. 5461. When a public utility or corporation fails to make any report or furnish any statement, which it is required to make or furnish, to the commission, or makes a return or statement of a portion only of the gross receipts or gross earnings, which it is required by law to make or return, and fails to make return or statement of the remainder, or fails to report a part or all of its taxable property, or report the same, or part thereof, according to its true value in money, the commission shall ascertain, as nearly as practicable, the gross receipts or gross earnings, or omitted portion of the same, or taxable property, or omitted part of the same, or such as was not reported according to its true value in money, that should have been reported or returned by such public utility or corporation, and certify such gross receipts or gross earnings, or the value of such property, so ascertained, as required in this act, with respect to its gross receipts, gross earnings and property of public utilities and corporations. When a domestic corporation makes a report of a portion only of its subscribed or issued and outstanding capital stock, the commission shall ascertain, as nearly as practicable, the omitted portion thereof, that should have been reported by such corporation, and certify such additional amount, as required in this act, with respect to the certification of the subscribed or issued and outstanding capital stock of domestic corporations. When a foreign corporation makes a report to the commission of a portion only of the property owned and used or business done by it in this state, or makes a report of a fictitious or excessive amount of property owned and used or business done by it outside of this state, or makes a report of a portion only of its total authorized capital stock, which it is required by law to make, the commission shall ascertain, as nearly as practicable, the total amount of property owned and used and business done by such foreign corporation in this state, and the total amount of property owned and used and business done by such foreign corporation outside of this state, and the proportion of the total authorized capital stock of such corporation, represented by property owned and used and business done in this state, and certify such corrected amount, or the difference between such corrected amount and the amount that may have previously been certified, as required in this act, with respect to the certification of the proportion of the authorized capital stock of foreign corporations, represented by property owned and used and business done by such corporations in this state. When a sleeping car, freight line or equipment company fails to make any report or statement, which it is required to make or furnish, to the commission, or makes a return or statement of a portion only of its total authorized capital stock, or of the value of its shares of stock, or of its real estate owned either within or without this state, or of the number and value of the cars owned or leased by it and the daily average number of cars operated in this state, or the length of the lines of railway over which the company runs its cars within this state, or makes a return or statement of a fictitious or excessive length of lines of railway over which the company runs its cars without this state, the commission shall ascertain, as nearly as practicable, the amount of the capital and property of any such

company owned and used in this state, and the amount of capital and property of such company owned and used outside of this state, and the proportion of the capital stock of any such company representing capital and property thereof owned and used in this state, as provided in this act, and shall certify such amount so ascertained, as required in this act, with respect to the certification of the amount and value of the proportion of the capital stock of such companies representing capital and property owned and used by them in this state. The power and duty of the commission, above provided for, shall extend to preceding years in such manner as that the commission shall, for such year or years preceding the year in which the inquiries are made, and omissions ascertained, certify such omitted amounts, so ascertained, as required in this act, with respect to such companies, in which event such omitted amounts shall be taxed at the rate of taxation belonging to the year or years in which the failure or omission occurred, in the case of property, and in all other cases the amount of the tax or fee upon such omitted amounts shall be calculated upon the amount so ascertained by the commission, at the rate provided by law, for such year or years; provided, however, that the power and duty of the commission with respect to property shall extend only to the five years next preceding the year in which such inquiries and corrections are made, and not in any event prior to the year 1911, except where no property of a company has been returned or assessed in any such year or years. (102 v. 224, § 72.)

Where a public utility in former years made an incomplete statement of its taxable property in its report to the tax commission of Ohio, but subsequently acquainted the tax commission with all the facts relative to the omitted property, and the commission, having before it such incomplete statement of facts, places a valuation upon the property of the utility for such years, such valuation, if made in the exercise of the jurisdiction conferred upon the commission by law, and upon the basis of accurate and correct knowledge of the facts, is final and no action may be taken by the tax commission, under section 5461, G. C., on the theory of placing omitted property on the duplicate, even though the commission's action may have been based upon erroneous legal principles as to the situs of certain property. A. G. R. 1915, p. 1844.

Commission may review findings.

SEC. 5517. Any bank, public utility or corporation may be heard by the commission upon the question as to the correctness of any determination, finding or order of the commission after the same has been made. Application to the commission for a review of any determination, finding or order by it made, must be filed within sixty days after the passage of this act, or within sixty days from the date of the certification thereof by the commission to the proper officer. The commission, upon such application, may make such correction in its determination, finding or order, as it may deem proper, and its decision in the matter shall be final. Such correction shall be certified to the proper official, who shall correct his records and duplicates in accordance therewith. In case any such bank, public utility or corporation has paid the tax or fee assessed against it under mistake, and such mistake is corrected by the commission, upon application so filed, so that the amount due from such bank, public utility or corporation, under such corrected determination, finding or order, is less than the amount of the taxes or fees paid, the county auditor or the auditor of state, as the case may be, shall upon certificate of such correction, as herein provided, draw his warrant on the treasurer, in favor of the bank, public utility or corporation, for the amount so erroneously paid by it. The county treasurer or the treasurer of state, as the case may be, shall pay such warrant; and there is hereby appropriated from the general revenue fund of any such county and from the general revenue fund of the state, not otherwise appropriated, such amount as may be necessary to pay such warrants. (102 v. 224, Sec. 128.)

Commission certifies corrections to both Auditor of State and State Treasurer.

That part of section 128 of the Hollinger bill which provides for an appropriation for an amount equal to such tax as the tax commission shall find to have been overpaid is in conflict with article 2, section 22 of the constitution of Ohio, because it is not specific and not limited to two years. A. G. R. 1911-1912, p. 148.

Correction of errors in taxes or other charges and provision for refunding of tax paid by mistake.

SEC. 20-1. That whenever any commission, board or officer of the state makes a finding determining the amount of any tax assessment or charge against any corporation, company, partnership or person, or makes any charge of any tax, assessment or charge against any corporation, company, partnership or person, pursuant to any law of the state imposing such tax, assessment or charge upon such corporation, company, partnership or person, and, upon the application of the corporation, company, partnership or person so charged and an investigation thereof, such commission, board or officer of the state so making such finding or determining or making such charge, finds that such tax, assessment or charge or any part thereof was erroneously charged, such commission, board or officer may make such corrections in its determination, findings or charge as shall be proper.

Such corrections shall be entered upon the minutes of the proceedings of such commission, board or officer, and certified to the proper officer who shall correct his records and duplicates in accordance therewith. In case any such corporation, company, partnership or person has paid such tax, assessment or charge into the state treasury by mistake, then, upon the finding of such commission, board or officer that all or any part of such tax, assessment or charge was erroneously charged and paid, and upon such corrections of the records and duplicates having been first made, such commission, board or officer, may issue a refunding order, directed to the auditor of state, for the amount of such tax, assessment or charge so found to have been erroneously charged. Upon receipt of such refunding order the auditor of state shall issue his warrant for the sum thereof and the treasurer of state shall pay the same out of the fund to which the tax, assessment or charge so erroneously charged and so paid by mistake, was credited. The auditor of state and the treasurer of state shall annually, at the time of making their annual report to the governor of the state, file with the governor and with the house of representatives of the general assembly, a detailed statement of all such refunding orders so paid. (106 v. 425.)

Affidavits as to use of money or property in aid of elections; form prescribed by commission and made part of return.

SEC. 5522. Every corporation or public utility required, by the provisions of this act, to make returns, statements or reports to the commission shall file therewith, in such form as the commission may prescribe, an affidavit subscribed and sworn to by a person or officer having knowledge of the facts therein set forth, setting forth that such corporation or public utility has not, during the preceding year, directly or indirectly paid, used or offered, consented or agreed to pay or use, any of its money or property for, or in aid of any political party, committee or organization, or for, or in aid of any candidate for political office or for nomination for any such office, or in any manner used any of its money or property for any political purpose whatever, or for the reimbursement or indemnification of any person or persons for moneys or property so used. Such forms of affidavits as the commission may prescribe shall be attached to or made a part of the return, statement or report required to be made by such corporation or public utility under any provision of this act. (102 v. 224, Sec. 133.)

For a somewhat analogous section, see G. C. 8729.

Compromise.

SEC. 5524. With the advice and consent of the commission, the attorney general may, before or after any action for the recovery of fees, taxes or penalties certified to him, as delinquent, under the provisions of this act, compromise or settle any claim for delinquent taxes, fees or penalties so certified. And all claims compromised or settled as herein provided shall be set forth in the annual report of the tax commission to the general assembly and governor, giving in detail the terms and conditions of such compromise or settlement. (102 v. 224, Sec. 135.)

This compromise must come through the Attorney General's department to the Tax Commission.

It being the duty of the county auditor under section 5579, G. C., to list and value business property, when the business is wholly carried on within one county but in more than one taxing district thereof, and there being a lack of specific machinery for the listing and valuation of such property, the tax commission of Ohio under the provisions of section 5624, G. C., may provide such machinery. — A. G. R. 1916.

Under section 5524, General Code, the attorney general is authorized, with the advice and consent of the tax commission, to compromise or settle any claim for delinquent taxes, fees or penalties. The use of the term "settle" in this statute justifies the construction that the attorney general, in accordance therewith, may remit or reduce penalties for any good and sufficient reason. The terms and conditions of such settlement must be set out in detail in the annual report of the tax commission to the general assembly and governor. A. G. R. 1913, p. 526.

Decisions by tax commission shall be binding.

SEC. 5623. The tax commission of Ohio shall decide all questions that may arise with reference to the construction of any statute affecting the assessment, levy or collection of taxes, in accordance with the advice and opinion of the attorney general. Such opinion and the rules, regulations, orders and instructions of the commission prescribed and issued in conformity therewith shall be binding upon all officers, who shall observe such rules and regulations and obey such orders and instructions unless and until the same are reversed, annulled or modified by a court of competent jurisdiction. (106 v. 265, Sec. 70.)

Uniform rules and regulations shall be prescribed, and be observed.

SEC. 5624. The tax commission of Ohio shall, from time to time, prescribe such general and uniform rules and regulations and issue such orders and instructions, not inconsistent with any provision of law, as it may deem necessary, respecting the manner

of the exercise of the powers and discharge of the duties of any and all officers, relating to the assessment of property and the levy and collection of taxes. It shall cause the rules and regulations prescribed by it to be observed, the orders and instructions issued by it to be obeyed and the forms prescribed by it to be observed and used. (106 v. 265, Sec. 71.) W. L. Secs. 54, 56.

Tax commission shall prescribe and furnish blank forms.

SEC. 5624-1. The tax commission of Ohio shall, from time to time, prescribe for and furnish to all county boards of revision, county auditors and county treasurers, blank forms for all oaths of office, statements, returns, reports, tax lists and duplicates, abstracts, records of proceedings, complaints, notices of appeal, tax bills and receipts, and all other documents, files and records authorized or required by any provisions of law relating to the assessment, levy or collection of taxes, or by any rules, regulations, orders or instructions of the commission, and blank forms of records and papers for all proceedings and official actions authorized or required by the provisions of any law relating to the assessment, levy or collection of taxes or by any rules, regulations, orders or instructions of the commission. County auditors, county treasurers and all other officers and all persons required to list property for taxation shall use true copies of such blank forms. (106 v. 266, Sec. 72. W. L. Sec. 55.)

Enforcement of rules, regulations, orders and instructions.

SEC. 5624-2. For the purpose of enforcing its rules, regulations, orders and instructions and compelling the observance and use of the forms prescribed by it, the tax commission of Ohio may institute, or cause to be instituted any proceedings, either civil or criminal, provided by law as a punishment for the neglect, failure or refusal to obey any lawful requirement or order by the commission, or as a means of preventing the violation or disobedience of such orders or compelling their enforcement. All such provisions of law shall be deemed to apply to the enforcement of the rules, regulations, orders and instructions of the tax commission of Ohio prescribed or issued under the authority of this act. (106 v. 266, Sec. 74. W. L. Sec. 56.)

Conference of assessment officers.

SEC. 5624-3. The tax commission of Ohio may require county auditors, assessors and members of county boards of revision to meet and confer with other county auditors, assessors, members of county boards of revision, or with the commission on any matter relating to the assessment and valuation of property for taxation at such times and places as may be prescribed, from time to time, by the commission. (106 v. 266, Sec. 75. W. L. Sec. 57.)

Compilation, publication and distribution of tax laws.

SEC. 5624-6. The tax commission of Ohio shall compile the laws of the state relating to the assessment of property for taxation and the levy and collection of taxes, with such annotations, instructions and references to the decisions of the courts concerning the same, as it may deem proper. The commission shall cause a sufficient number of copies of the same to be printed and distributed to the several county boards of revision, prosecuting attorneys, county auditors, and county treasurers in the state and to such other officers and persons as the commission may deem proper. The commission shall, from time to time, designate, by order to the supervisor of public printing, the number of copies of the same required by it, and copies shall be printed in the manner provided by law for other public documents and distributed by the commission. (106 v. 268, Sec. 81. W. L. Sec. 66.)

Tax commission entitled to be heard in any court.

SEC. 5624-8. For the purpose of protecting the public interests, the tax commission of Ohio is authorized to appear and upon its application, entitled to be heard in any court or tribunal, in any proceeding involving the appraisement, valuation or equalization of property for the purpose of taxation, or the assessment or collection of taxes, and it shall be the duty of the clerk of any court of record, to immediately transmit to the commission, by registered letter, a copy of the petition filed in any such action, and charge the fee therefor in the costs. (106 v. 268, Sec. 83.)

Remedy of improper administration of tax laws.

SEC. 5624-9. The tax commission of Ohio may cause to be instituted proceedings to remedy improper or negligent administration of the taxation laws of the state. (106 v. 268, Sec. 84.)

Remission of taxes and penalties.

SEC. 5624-10. The tax commission of Ohio may remit taxes and penalties thereon, found by it to have been illegally assessed, and such penalties as have accrued or may accrue, in consequence of the negligence or error of an officer required to perform a duty relating to the assessment of property for taxation, or the levy or collection of taxes. It may correct an error in an assessment of property for taxation or in the tax list or duplicate of taxes in a county, but its power under this section shall not extend to taxes levied under the provisions of subdivision 2 of chapter 15 of title 2, part second of the General Code. (106 v. 269, Sec. 90.)

Similar power to remit taxes was conferred upon the auditor of state by G. C. § 258 (R. S. 167) which was repealed in 101 v. 399.

Notice and report of the remission of taxes and penalties.

SEC. 5624-11. No such taxes, assessments or penalties in excess of one hundred dollars, shall, in any case, be remitted until after ten days' notice in writing of the application to have same remitted has been served upon the prosecuting attorney and the county auditor of the county where such taxes or assessments were levied and proof of such service has been filed with the commission. When any taxes or penalties have been remitted as provided in this and the next preceding section, the commission shall make a report thereof to the auditor of state. (106 v. 270, Sec. 91.)

CHAPTER THREE.

ASSESSING OFFICERS. (Continued)

WARD AND TOWNSHIP ASSESSORS.

SECTION	ASSESSORS.	SECTION	
3349.	Election of assessors.	3357.	Return of statistics; agricultural statistics.
3349.	Assessment districts.	3358.	Penalty for not making out and returning statistics.
3349.	Qualifications, term, powers and duties.	3359.	Penalty for refusing to make statements.
3350.	Appointment of assistant assessors.	3360.	Quadrennial enumeration of unfortunates.
3350.	Qualifications and duties.	3361.	Abstract of returns of epileptics and epileptic insane.
3351.	Bond of assessors and assistants.	3364.	Compensation of assessors and assistants.
3351.	Approval and finding; release of surety.	3364.	Time for completion of work.
3351.	Bond of member of board of revision.	5393.	When assessor shall deliver returns to auditor.
3352.	Oath of assessor and assistant.	5897.	Cigarettes; assessors' returns.
3352.	Same of member of board of revision.	5898.	Penalty for failure to make returns.
3353.	Removal of assessors or assistants; causes.	6081.	Intoxicating liquors; assessors' returns.
3353-1.	Vacancies, how filled.	6082.	Penalty.
3354.	General powers and duties of assessors and assistants.	6083.	Statement in such return.
3355.	Assessor shall administer oath.		
3356.	Statistics to be gathered and returned by assessor.		

Election of assessors; assessment districts; qualifications, term, power and duties.

SEC. 3349. At the regular election to be held in November, 1915, and biennially thereafter, assessors shall be elected in the manner provided by law for the election of ward, district, city, village and township officers as follows: In municipal corporations divided into wards, one assessor shall be elected in each ward; in villages one assessor shall be elected; in cities not divided into wards, the board of deputy state supervisors of elections or the board of deputy state supervisors and inspectors of elections, as the case may be, shall, acting in conjunction with the county auditor, within ten days after this act shall become effective, divide such cities or such part or parts thereof as may be located in their county, into such number of assessment districts as in the judgment of the county auditor may be necessary in order to provide for the assessment of all the property therein; a division so fixed shall remain in effect for a period of four years, at the expiration of which and quadrennially thereafter a like division shall be made in the same manner and by the same authority. One assessor shall, at the time specified in this section, be elected in each assessment district so created; provided, however, that nothing therein shall be so construed as to require a division of any municipal corporation or part thereof into assessment districts when, in the judgment of the county auditor, such division is not necessary, in which event one assessor shall be elected in the entire municipal corporation or in that part thereof which may be located in one county as the case may be; in townships not having a municipal corporation therein, one assessor shall be elected in such township; in townships composed in part of a municipal corporation, one assessor shall be elected in the territory outside such municipal corporation. An assessor shall be a citizen possessing the qualifications of an elector of such ward, district, city, village or township. Such assessor shall take and hold his office for the term of two years from and after the first day of January following his election. Upon the election and qualification of such assessor, the right of the deputy assessor, theretofore appointed under any provision of law to exercise any powers or perform any duties as such deputy assessor shall cease and determine, and he shall turn over to the person so elected and qualified, all the books, records, papers and furniture of said office. Such elected assessor shall be the successor of said appointed officer, with full power to take up, carry on and complete any and all of the unfinished business thereof, and he shall perform all the duties, exercise all the powers and be subject to all the liabilities and penalties devolved, conferred or imposed by law upon the deputy assessor so appointed. (106 v. 250, Sec. 17.)

Sections 5035, 5119 and 5121, G. C. relating to the election of "assessors of real property" are unrepealed although the office of assessor of real property was abolished, 103 v. 803.

When assessors elected under the provisions of section 3349, G. C. (106 O. L., 250), file their bonds after the expiration of the time prescribed therefor by section 3353-1 (106 O. L.,

252), the county auditor, if he has not filled the vacancies thus created by appointment, may accept said bonds and permit said assessors to take the oath of office. A. G. R. 1915, p. 2394.

An elector of a municipal corporation located within a township is not an elector of said township as contemplated by the following provision of section 3349, G. C., 106 O. L., 250, viz.: "An assessor shall be a citizen possessing the qualifications of an elector of such ward, district, city, village or township" and may not qualify as an assessor of said township. A. G. R. 1915, p. 2203.

Under provision of section 17 of the so-called Parrett-Whittemore law, being section 3349, G. C., 106 O. L., 250, where a municipal corporation is located in more than one county, each of the several parts of said municipal corporation as located in the several counties respectively, constitutes an assessment district in which an assessor should be elected as provided in said section. A. G. R. 1915, p. 2460.

The election of a resident of a village within a township as township assessor and the election of a resident of the territory of a township outside of such village as village assessor, are void and of no effect, and a certificate of such election may not be compelled to be delivered to the person found by the canvassing officers to be so elected.

A vacancy will occur in such offices on the first day of January, following, to be filled in the manner provided by law.

Candidates for the office of assessor as provided by section 3349, G. C., may have their names printed upon the ballots by filing a proper petition with the deputy state supervisors of elections of the county in which primary elections are authorized to be held sixty days prior to the August primaries, or candidates for such office may be nominated by having their names written upon the ballots the same as in the case of nomination for other offices and the ballots may be so printed as to permit the writing in of the names of candidates for such office. A. G. R. 1915, p. 915.

Appointment of assistant assessors; qualifications and duties.

SEC. 3350. A county auditor, who deems it necessary to enable an assessor to complete his work within the time prescribed, may appoint one or more assistant assessors for such ward, district, city, village or township. The county auditor shall assign to each assistant assessor such portion of the work of the assessor as he thinks proper. An assistant assessor shall possess all the qualifications of an elected assessor and, after giving bond and taking an oath of office as prescribed by law, shall, in the work assigned to him, perform all the duties and be subject to all the liabilities and penalties enjoined upon elected assessors by the provisions of law. Such assistant assessors shall not be subject to the provisions of any civil service law or regulation. (106 v. 251, Sec. 18.)

Bond of assessors and assistants; approval and filing; release of surety; bond of member of board of revision.

SEC. 3351. Each assessor, assistant assessor and member of a county board of revision shall give bond, payable to the state for the faithful performance of his duties. The form of such bonds shall be prescribed by the attorney general and furnished by the tax commission of Ohio, and their execution shall be approved by the prosecuting attorney of the proper county. Each bond when executed shall be submitted, with the oath of office endorsed thereon, to the auditor of the county wherein the principal resides. If the auditor approves the surety thereon, he shall endorse his approval on the bond and file it in his office and there safely keep it. The sureties on such bonds may be released from liability thereon in the manner and subject to the limitations provided by section twelve thousand one hundred and ninety-five to section twelve thousand one hundred and ninety-seven, inclusive, of the General Code. Each such bond, and the principal thereon, personally, shall be liable, in addition to any other liability growing out of the exercise of the powers and duties of his office by the principal, for any damage to any person caused by any neglect, default, fraud or unlawful act of the principal, of which he may be guilty while acting within the scope of his official duties or under color of his official authority. The bond of an assessor shall be in the sum of one thousand dollars, that of an assistant assessor in the sum of five hundred dollars and that of a member of a county board of revision in the sum of two thousand dollars. (106 v. 251, Sec. 19. W. L. Sec. 36.)

Oath of assessor, assistant and member of board of revision.

SEC. 3352. Each assessor, before entering upon the discharge of the duties of his office, shall take and subscribe an oath, faithfully and impartially to assess the property in his district, and otherwise faithfully to perform the duties imposed upon him and impartially to exercise the powers vested in him by law. Each assistant assessor shall, before entering upon the discharge of the duties of his office, take and subscribe an oath, faithfully and impartially to assess the property assigned to him by the county auditor, and otherwise faithfully to perform the duties imposed upon him and impartially to exercise the powers vested in him by law. Each member of a county board of revision shall, before entering upon the discharge of the duties of his office, take and subscribe an oath faithfully and impartially to discharge the duties of his office. (106 v. 251, Sec. 20. W. L. Sec. 39.)

Removal of assessors or assistants; causes.

SEC. 3353. The county auditor may summarily remove any appointed assessor or assistant assessor when, in his judgment, the public interest so requires. He may also remove

any elected assessor for want of moral character, inefficiency, incompetency, neglect or breach of duty or malfeasance in office, giving to him a copy of the charges against him, and an opportunity to be publicly heard thereon upon not less than ten days' notice. The decision of the county auditor therein shall be final. The county auditor may suspend without pay such assessor during the pendency of such proceedings for his removal. (106 v. 252, Sec. 21.)

Vacancies, how filled.

SEC 3353-1. If there shall be a failure to elect an assessor in any ward, district, city, village or township, or if a person elected assessor fails to give bond and take the oath of office within thirty days after his election, or if after his appointment or election, an assessor shall remove from the ward, district, city, village or township for which he was appointed or elected, the office shall be deemed vacant. Should there be at any time a vacancy in such office for any of the causes aforesaid, or from any other cause, the county auditor shall fill such vacancy by appointing any competent and suitable elector of such ward, district, city, village or township, who will accept and perform the duties of such office. (106 v. 252, Sec. 22.)

General powers and duties of assessors and assistants.

SEC. 3354. Assessors, within their respective districts, and assistant assessors within such territory as may be assigned to them respectively, shall, under the direction of the county auditor, list and value for taxation the property subject to taxation therein, except as otherwise provided by law, and in the performance of such duties shall have and perform under his direction all the powers and duties of the county auditor in respect thereto. Wherever in the General Code, or in this act, the words "assessor", "district assessor", "township assessor", "ward assessor", "precinct assessor", "assessor of real estate" or "assessor of real property", are used, the same shall be deemed to mean the county auditor or the assessor, as the case may be. The county auditor or the assessor shall, unless otherwise provided by law, perform, or cause to be performed, all the duties, exercise all the powers and be subject to all the liabilities and penalties devolved, conferred or imposed by law upon such officers. (106 v. 253, Sec. 24. W. L. Sec. 4.)

Assessor shall administer an oath.

SEC. 3355. The assessor shall actually administer an oath, as required by law, to each person upon whom he calls to list property for taxation, and personally urges and insists upon a strict compliance with law in the making of such list. Should the assessor neglect to administer such oath, or knowingly omit the performance of any other duty, for every such offense he shall be fined not less than ten nor more than two hundred dollars, and stand committed until the fine and costs are paid. He shall not be liable for failure to administer it if the person declines to take such oath, or is unable from sickness or absence. (R. S. Sec. 1521.)

Statistics to be gathered and returned by assessors.

SEC. 3356. Annually, at the time of taking the lists of personal property for taxation, the assessor shall require and take for each person, company and corporation in his township or precinct verified by oath, the statements for the preceding year following:

AGRICULTURE.

The number of sheep killed by dogs, their value, and the number of sheep injured by dogs, and the estimate of the amount of damages by such injury; the number of acres put in wheat, rye, barley, corn, oats, and buckwheat, and the number of bushels of each produced; the number of acres in timothy and other grass, except clover, and the number of tons of grass and bushels of seed produced therefrom; the number of acres in clover, the number of tons of hay made therefrom, the number of bushels of seed obtained therefrom, and the number of acres of clover plowed under for manure; the number of acres planted in tobacco, and the number of pounds obtained therefrom; the number of acres put in flax, the number of pounds of fiber gathered, and the number of bushels of seed obtained; the number of acres planted in sorgo, the number of gallons of syrup, and pounds of sugar manufactured; the number of pounds of maple sugar, and the number of gallons of maple syrup manufactured; the number of pounds, each, of butter and cheese manufactured; the number of acres planted in potatoes, and the number of bushels produced; the number of acres planted in sweet potatoes, and the number of bushels produced; the number of acres in vineyard, the number of acres planted within the year, the number of pounds of grapes gathered, and the number of gallons of wine produced; the number of pounds of wool shorn; the number of acres in orchard, and the number of

bushels of apples, peaches, cherries, plums, and pears produced; the number of acres used for pasturage, and the number of acres not cultivated or pastured; the number of hives of bees, and the number of pounds of honey produced; the number of dozens of eggs shipped to places beyond the state; the number of acres sowed, planted or to be sowed in wheat, rye, barley, oats, corn, and potatoes, for the harvest of the then present year.

MANUFACTURED.

The number of tons each of cold-blast pig-iron manufactured from native ore smelted with charcoal, of hot-blast pig metal manufactured from the same material, and of pig metal made from native or foreign ore, smelted with stone coal; the number of tons each manufactured of bar and nail-rod iron, nails, hoop-iron, sheet-iron, stoves and hollow-ware, all other castings, spikes and railroad chairs, car wheels, and of railroad iron; the number each of locomotives built, steam engines constructed, plantation sugar-mills made, portable saw-mills made, and the number in use; the number, each, of reaping and mowing-machines, and of threshing-machines.

WATER CRAFTS.

The number of steam-boats built upon the Ohio river and its navigable tributaries, and the number of barges, flat-boats, and store-boats, and the value of each; the number of steam-boats and all sail-vessels built upon Lake Erie and its tributaries within the borders of the state, and the value of each; the number of canal-boats built and used in navigating the canals.

MINES AND MINING.

The number of bushels of stone coal mined; the number of persons in mining stone coal, and the average rate of wages paid; the number of tons of iron ore mined; the number of persons engaged in mining iron ores, and the average rate of wages paid; the number of bushels of salt manufactured; the number of gallons of petroleum produced; the number of barrels of lime made; the number of barrels of water cement; the number of gallons of stone-ware made.

WAGES.

The number of adult male persons engaged in each of the mechanic arts, and the average monthly or daily wages of each; the number of common laborers, and the average daily wages of each; the number of common farm laborers, and the average monthly wages of each; the average monthly wages paid to clerks and salesmen and saleswomen; the average monthly wages paid to bookkeepers.

INVESTMENTS.

The amount of United States bonds owned; the amount of legal tender notes or moneys exempt from taxation; and the amount of state bonds or certificates.

SOCIAL.

The number of marriages between persons related to each other by blood, and the degree of such relationship; the number of persons born with imperfect senses or idiotic, and how many of such persons are the offspring of parents related to each other by blood; the number of houses of prostitution or assignation, and the number of prostitutes. (R. S. Sec. 1522.)

Cited: *Bank v. Miller*, 19 Fed. 372, 5 O. F. D. 247.

The official acts of the assessor are evidenced by and embodied in his return, and can not be shown otherwise: *Wagner v. Zumstein*, 21 Bull. 317, 10 Dec. Rep. 515.

Return of statistics; agricultural statistics.

SEC. 3357. At the time he returns the lists of personal property for taxation, the assessor shall make return of all such statistics to the county auditor. On or before the first day of August, each year, the county auditor shall make return to the auditor of state of all statistics returned to his office, except those statistics under the head of "agriculture," which he shall return to the agricultural commission on or before the tenth day of July, each year, and the commission may compile and publish them in the monthly crop and stock bulletins and annual report. (R. S. § 1523; 103 v. 338.)

Penalty for not making out and returning statistics.

SEC. 3358. An assessor who neglects or refuses to make out and return statistics as herein required, shall forfeit and pay to the state not less than twenty nor more than one hundred dollars, to be recovered by action which shall be brought by the prosecuting attorney, on the request of the auditor of state. The amount recovered, shall be paid into the state treasury to the credit of the school fund. (R. S. Sec. 1524.)

Penalty for refusing to make statements.

SEC. 3359. Any person, company or corporation, refusing to make out and deliver a statement of the facts, or any of them, herein required, shall forfeit and pay to the state not less than fifty nor more than one hundred dollars, to be recovered and paid as provided in the next preceding section. (R. S. Sec. 1525.)

Quadrennial enumeration of unfortunates.

SEC. 3360. Quadrennially at the time of taking a list of property for taxation, each assessor shall take an enumeration of all deaf and dumb, blind, epileptic and epileptic insane, insane and idiotic persons, whose usual place of residence is in any family, jail or infirmary in his township or precinct, on the day preceding the second Monday of April, with their names in full, their age, sex, race, residence, whether in charge of parents or guardian, and, where known, the cause and duration of such deficiency. He shall make a list of such deaf and dumb, blind, epileptic and epileptic insane, insane and idiotic persons, designating those of each class, and the names of their parents or guardians, and post-office address, and return it to the county auditor, on or before the third Monday of May in the same year. (R. S. Sec. 1526.)

Abstract of returns of epileptics and epileptic insane.

SEC. 3361. Quadrennially, on or before the third Saturday in August, on blanks to be furnished by such manager, the auditor of each county shall make and transmit to the manager of the Ohio hospital for epileptics, a duly certified abstract of the enumeration returns of epileptics and epileptic insane, so made to him by the assessors, and at same time make and furnish the probate judge of his county a like certified abstract of epileptics and epileptic insane in the county, as returned by the assessors. For making and transmitting such abstract, the auditor shall receive eight cents per hundred words, to be paid from the county treasury on the allowance of the county commissioners. (R. S. Sec. 1526a.)

Compensation of assessors and assistants; time for completion of work.

SEC. 3364. The compensation of assessors and assistant assessors, which shall be paid out of the county treasury, shall not be less than three dollars nor more than six dollars per day for each day they are necessarily engaged in the performance of their duties. Such compensation shall annually be fixed within such limits by the county auditor subject to the approval of the board of county commissioners. Each assessor and assistant assessor shall make and file with the county auditor a statement giving in detail the date of each day on which he was necessarily engaged in the performance of his duties, and verify it by oath, which oath the county auditor may administer. If the county auditor is satisfied that such statement is correct he shall draw his warrant on the county treasurer for the amount thereof. No such warrant shall be drawn until such assessor or assistant assessor has filed with the county auditor all the statements and returns of property listed by him, the lists of the owners of property, the statistics and enumerations required of him by law, and the county auditor is satisfied that the same are as full and accurate as could be made. The county auditor shall fix the time within which such officers shall complete their work and they shall not receive compensation for a longer period, unless the county auditor, for good cause shown, shall extend the same. (106 v. 252, Sec. 23. W. L. Sec. 34-1.)

When assessor shall deliver returns to auditor.

SEC. 5393. On or before the first Monday in June, annually, each assessor and assistant assessor shall deliver to the county auditor all statements and returns of property listed by him, together with a list of the owners of property, in such form and detail as may be prescribed by the tax commission of Ohio. The county auditor shall place on file all the statements and returns of property as revised by the county board of revision in his office, arranged in alphabetical order, the different townships, cities and villages in separate bundles, and shall carefully preserve them therein for at least five years, after which he shall sell the same as waste paper and pay the proceeds into the county treasury. (106 v. 261, Sec. 57. W. L. Sec. 11.)

CIGARETTES.

Assessors' returns.

SEC. 5897. An assessor shall return to the county auditor, with his other returns, a statement upon a blank to be furnished by such auditor for that purpose, of each place in his jurisdiction where such business is conducted, showing the name of the person, firm, company, corporation or co-partnership engaged therein, a brief and accurate description of the premises where it is conducted, and by whom owned. Such statement shall be signed and verified by such person, firm, company, corporation or co-partnership. (91 v. 311, Sec. 4.)

Penalty for failure to make returns.

SEC. 5898. If such person, firm, company, corporation or co-partnership, fails or refuses to furnish the requisite information for such statement, or to sign or verify it, that fact shall be returned by the assessor, and the assessment shall be four times the amount provided in this chapter. The person, firm, company, corporation or co-partnership entering into such business after the assessor has made such return, before so doing shall make the return herein required to the county auditor, and, failing to do so, such assessment shall be four times the amount provided in this chapter. (91 v. 311, Sec. 4.)

INTOXICATING LIQUORS.

Assessors' returns.

SEC. 6081. Each assessor shall return to the county auditor, with his other returns, upon a blank to be furnished by the auditor for that purpose a statement, as to each place within his jurisdiction where such business is conducted, showing the name of the person, corporation or co-partnership engaged therein, a brief and accurate description of the premises where it is conducted, and by whom owned. Such statement shall be signed and verified before the assessor by such person, corporation, or co-partnership. (100 v. 89, Sec. 5.)

Penalty.

SEC. 6082. If such person, corporation or co-partnership, on demand, refuses or fails to furnish the requisite information for the statement, or to sign or verify it, such fact shall be returned by the assessor, and thereupon the assessment on said business shall be fifteen hundred dollars. If such assessment is not paid when due, there shall be added a penalty thereto of twenty per cent which shall be collected therewith. (100 v. 89, Sec. 5.)

Statement in such return.

SEC. 6083. The statement named in section sixty hundred and eighty-one, shall also contain the following questions and answers thereto:

1. Are you, or if a firm, is any member of your firm an alien or an unnaturalized resident of the United States?
2. Have you, or has any member of your firm or any officer of your corporation, ever been convicted of a felony?
3. Have you, within the past twelve months, knowingly permitted gambling to be carried on, in, upon or in connection with your place of business?
4. Have intoxicating liquors been sold at your place of business to minors, except on the written order of their parents, guardians or family physicians, or to persons intoxicated or in the habit of getting intoxicated, within the past twelve months, with your knowledge?
5. Have you knowingly permitted improper females to visit your place of business within the past twelve months? (100 v. 89, Sec. 5.)

Section 6083 of the Dean law requiring the performance of certain conditions precedent, to be disclosed by answers to certain questions therein demanded with respect to naturalized citizenship, and restraints from certain prohibited acts, is unconstitutional.

Said law in its discrimination against aliens, is furthermore a violation of the fourteenth amendment to the federal constitution, prohibiting the states from denying any "person" within its jurisdiction, the equal protection of its laws.

The county auditor and treasurer therefore, may not reject the Dow-Aiken tax when proffered, regardless of the provisions of section 6083. A. G. R. 1911-1912, p. 1197.

CHAPTER FOUR.

ASSESSING OFFICERS. (Continued.)

COUNTY BOARDS OF REVISION.

SECTION		SECTION	
5580.	Board to name members. Approval.	5587.	Office hours of board and service of employes.
5581.	Appointment of members of county board of revision.	5592.	Organization of board; record of proceedings.
5581.	Qualification and term.	5593.	Sessions of board; adjournments.
5582.	Certification of appointments.	5594.	Appointment of experts, clerks, etc.; compensation.
5583.	Removal of members, experts, clerks, etc.	5595.	Quorum; investigations and hearings.
5584.	Compensation; how fixed.	5596.	Laws respecting valuations shall govern board.
5585.	How compensation of boards, assessors, assistants, etc., shall be paid.	5596.	Power to call and examine witnesses.
5586.	Power to administer oaths and certify official acts.		

Board of appointment to name members of board of revision; approval.

SEC. 5580. The county treasurer, prosecuting attorney, probate judge, and the president of the board of county commissioners of each county shall constitute a county board for the appointment of three members of county boards of revision. All appointments made by such county appointing board must be approved by the tax commission of Ohio before the same shall become effective. In case the county board fails to make any appointment as provided in this act, or such appointment is not approved by the tax commission of Ohio within ten days after such appointment is made, the tax commission of Ohio shall make such appointment. (106 v. 433, Sec. 31.)

Appointment of members of county board of revision; qualification and term.

SEC. 5581. On or before January 10, 1916, on or before April 10, 1917, and on or before April 10th of each year thereafter the county board provided for in the next preceding section shall appoint three competent persons who shall constitute the county board of revision for the county. Such persons shall serve until the completion of the work as provided in section 40 of this act. Each such member of the county board of revision shall be an elector and free-holder of the county. No more than two members of the county board of revision shall be of the same political party; and not more than one be a resident of the same township, city or village; provided, however, that if the amount of taxable property in any city within a county exceeds the amount of taxable property outside of such city and within the county two such members of the county board of revision in any such county shall be residents of such city. Whenever any such member of the county board of revision ceases to be a resident and freeholder of the county or by reason of removal from one township, city or village to another, or otherwise ceases to possess any of the qualifications required by this section his office shall be vacant. (106 v. 433, Sec. 32. W. L. Sec. 13.)

Certification of appointments to county auditor and tax commission.

SEC. 5582. The appointment of members of county boards of revision shall be certified to the auditor of each county for which the appointments are made and to the tax commission of Ohio. The action of the tax commission of Ohio fixing the number of appointees and employes of county boards of revision shall be certified to the respective county auditors. Removals and changes in the number of appointees and employes shall be certified in like manner. Appointments or employments made by the county boards of revision shall be certified to the county auditor of the county and to the tax commission of Ohio. (106 v. 255, Sec. 33. W. L. Sec. 33.)

Removal of member of board of revision, expert clerk, etc.

SEC. 5583. The tax commission of Ohio may, upon its own motion, remove any member of a county board of revision, when in its judgment the public interest so requires. Such removal may also be made by the tax commission upon complaint of twenty-five or more

taxpayers, or of the board of county commissioners, prosecuting attorney, or treasurer of the county for which the accused officer was appointed, or any board of township trustees, board of education, mayor or council of any municipal corporation in such county. Every such complaint filed with the tax commission shall be in writing and shall specifically set forth in detail the charges against the officer complained of. A duplicate copy of such complaint shall be served by the complainant or complainants upon the accused officer personally and proof of such service by affidavit shall be filed with the tax commission at the time the complaint is filed. The tax commission shall investigate the charges made in such complaint and shall afford the accused officer an opportunity to be heard thereon. The tax commission of Ohio may, upon its own motion, summarily remove any expert, clerk or other employee of a county board of revision. County boards of revision may summarily remove any of their officers or employees. All removals shall be certified by the removing authority to the auditor of the proper county and the board or officer having power of appointment. (106 v. 255, Sec. 34.)

Compensation, how fixed.

SEC. 5584. The compensation of the members of each county board of revision shall not be less than three dollars and fifty cents nor more than ten dollars per day for each day the board is in session, and shall annually be fixed within such limits by the county commissioners, by order directed to the county auditor. (106 v. 226, Sec. 35. W. L. Sec. 34.)

How compensation of boards, assessors, assistants, etc., shall be paid.

SEC. 5585. The compensation of the members of the county board of revision shall be paid monthly out of the county treasury on the warrant of the county auditor. The compensation of the assessors and assistant assessors and of the experts, clerks and other employees of the county boards of revision shall be paid in like manner upon the certificate of the county auditor or county boards of revision, as the case may be. The contingent expenses of the county auditor and county board of revision, including postage, and express charges, their actual and necessary traveling expenses and those of their deputies, experts, clerks or employees on official business outside of the county, when required by orders issued by the tax commission of Ohio, shall be allowed and paid as other claims against the county. (106 v. 256, Sec. 36. W. L. Sec. 35.)

Power to administer oaths and certify official acts.

SEC. 5586. Each assessor, assistant assessor and member or chief clerk of a county board of revision shall have power to administer oaths and to certify to official acts in any matter, relating in any way to his official duties. (106 v. 256, Sec. 37. W. L. Sec. 42.)

Office hours of board and service of employees.

SEC. 5587. County boards of revision shall, during the time fixed for their sessions keep their offices open during the business hours on each business day, and the appointed members of such boards, their experts, clerks and other employees shall, during their term of office, or periods of service or employment, devote their entire time to their respective duties; provided, however, that county boards of revision may, with the approval of the tax commission of Ohio, employ experts, clerks or other employees with the understanding that they shall devote a part only of their entire time to their respective employments. (106 v. 256, Sec. 38. W. L. Sec. 40.)

Organization of board; record of proceedings.

SEC. 5592. Each county board of revision shall organize annually, on the second Monday in June or at such time as may be directed by the tax commission of Ohio, by the election of a chairman for the ensuing year. The county auditor shall be the secretary of the board of revision. He shall be present at each meeting of the board in person or by deputy and keep an accurate record of the proceedings of the board in a book to be kept for the purpose and perform such other duties as may be incident to the position. For his services as secretary of such board he shall receive out of the county treasury five dollars for each day the board is in session, for the use of his fee fund. (106 v. 433, Sec. 39. W. L. Sec. 16.)

Sessions of board; adjournment.

SEC. 5593. County boards of revision shall hold sessions beginning on the second Monday of June, and the first Monday of August respectively and convene at such other times as the tax commission of Ohio may order. Such boards may adjourn from day to

day and shall complete their work within such times as may be fixed by the tax commission of Ohio for the completion thereof. (106 v. 257, Sec. 40. W. L. Sec. 19.)

Appointment of experts, clerks, etc.; compensation.

SEC. 5594. Each county board of revision shall appoint such number of experts, clerks and employes as may, from time to time, be prescribed for it by the tax commission of Ohio. Such experts, clerks and employes shall hold their employments for such time as may be prescribed by the tax commission of Ohio. The compensation of such experts, clerks and employes shall be fixed by the board of county commissioners. Such experts, clerks and employes shall not be subject to the provisions of any civil service law or regulation. (106 v. 257, Sec. 41. W. L. Sec. 17.)

Quorum; investigations and hearings.

SEC. 5595. A majority of a county board of revision shall constitute a quorum to hear and determine any complaint, and any vacancy shall not impair the right of the remaining members of such board to exercise all the powers thereof so long as a majority remains. Any investigation, inquiry or hearing may be undertaken or held by or before any one member of the board when directed so to do by the board. Any investigation, inquiry, hearing or decision of a member of the county board of revision, when approved and confirmed by the board, and so shown upon its record of proceedings, shall be deemed to be the official action of the board. (106 v. 257, Sec. 42. W. L. Sec. 20.)

Laws respecting valuations shall govern the board; power to call and examine witnesses.

SEC. 5596. The county board of revision shall in all respects be governed by the laws respecting the valuation of real and personal property and shall make no change of any valuation except in accordance with such laws. The county board of revision may call persons before it and examine them under oath as to their own or other's property, moneys, credits and investments to be placed on the tax list and duplicate for taxation, or the value thereof. If a person notified to appear before the board refuses or neglects to appear at the time required, or appearing, refuses to be sworn or answer any question put to him by the board or by its order, the chairman of the board shall make complaint thereof, in writing to the probate judge of the county, who shall proceed against such person in like manner as is provided for in the last subdivision of chapter three, title one, part second, of the General Code. (106 v. 257, Sec. 43. W. L. Sec. 26.)

See Section 3351 G. C. (106 v. 251, § 19) for provisions relating to bond of member of county board of revision.

See Section 3352, G. C. 106 v. 251, as to their oath of office.

CHAPTER FIVE.

ASSESSING OFFICERS. (Continued.)

MISCELLANEOUS PROVISIONS.

SECTION		SECTION	
2583.	Tax list and duplicate; when and how prepared.	5624-4.	Tax commission may order reassessment.
5588.	Vacancies: how filled.	5624-5.	How reassessment shall be made.
5589.	Offices, equipment and supplies.	5624-12.	Additional powers and duties.
5590.	Other offices: who prohibited from holding.	5624-13.	Public records and accounts may be examined.
5591.	Documents open to public inspection.	5624-14.	Property subject to tax in another county: duty of officers discovering same.
5622.	Notice to prosecuting attorney of violations.	5624-15.	Prosecuting attorney legal advisor in matters of taxation.

Auditor's tax list and treasurer's duplicate; when and how prepared.

SEC. 2583. On or before the first Monday of July, annually, the county auditor shall compile and make up, in tabular form and alphabetical order, separate lists of the names of the several persons, companies, firms, partnerships, associations and corporations in whose names real or personal property has been listed in each township, city, village, special district or separate school district in his county, placing separately, in appropriate columns opposite each name, the description of each tract, lot or parcel of real estate, the value of each tract, lot or parcel and the value of the improvement thereon, if any, and in a separate list the aggregate value of the personal property as listed therein and revised by him, or the county board of revision, as the case may be, and the number of dogs and the value, if given by the owner. If the name of the owner of any tract, lot or parcel of real estate or of any item of personal property is unknown, the word "unknown" shall be entered in the column of names opposite said tract, lot, parcel, or item. Such lists shall be prepared in duplicate. On or before the first Monday of September in each year, the county auditor shall correct such lists in accordance with the additions and deductions ordered by the tax commission of Ohio and by the county board of revision, and shall certify and on the first day of October deliver one copy thereof to the county treasurer. The copies prepared by the county auditor shall constitute the auditor's tax list and treasurer's duplicate of real and personal property for the current year. In making up such tax lists, the county auditor may place each town lot in its numerical order, and each separate parcel of land in each township according to the numerical order of the section. (106 v. 261, Sec. 56. W. L. Sec. 7.)

Under the provisions of this section, the old appraisement must necessarily become the tax list assessment for all real property which has not been assessed or reassessed under section 5548, G. C., and said valuations being on the tax list for the current year, become the subject of complaint under provision of section 5609, G. C.

No provision of the Parrett-Whittemore Act (106 v. 246) vests in the county auditor any authority to originate or to change valuations of real estate listed and returned to him by the local assessors or assistant assessors, as the case may be. The only authority in the county auditor to originate or to change the valuations of personal property is found in the provisions of sections 5388, 5400 and 5401, G. C. — A. G. R. 1916.

Vacancies; how filled.

SEC. 5588. Vacancies in any office or employment provided for in this act, for which a term is fixed herein, shall be filled for the unexpired term. Vacancies in offices or employments, the tenure of which is prescribed by the tax commission of Ohio, shall be filled for the remainder of the period so prescribed. All appointments to fill vacancies shall be certified in the manner provided in this act for original appointments. The county auditor shall forthwith notify the county board provided for in section 31 of this act, of any vacancy in the office of a member of the county board of revision in his county. Within ten days after receipt of such notice, such board shall fill the vacancy. (106 v. 270, Sec. 92. W. L. Sec. 37.)

Offices, equipment and supplies.

SEC. 5589. The county commissioners shall furnish for the county board of revision in each county, and its experts, clerks and employes, suitable office rooms at the county seat

and shall furnish the county auditor for his own office and for the county board of revision, all maps, plats, stationery, blank forms, books, supplies, furniture and other equipment necessary for the proper discharge of its duties and for the preservation and safe keeping of its books, records and files. Provided, however, that the maps, plats, stationery, blank forms and other supplies and equipment used by the county auditor shall, so far as practicable, be used also by the county board of revision. (106 v. 270, Sec. 93. W. L. Sec. 41.)

Assessment official or employee shall hold no other office.

SEC. 5590. An assessor, member of a county board of revision or an assistant, expert, clerk or other employee of a county board of revision shall not, during his term of office, or period of service or employment, as fixed by law or prescribed by the tax commission of Ohio, hold any other public office of trust or profit, except offices in the state militia or the office of notary public. (106 v. 270, Sec. 95. W. L. Sec. 38.)

All documents shall be open to public inspection.

SEC. 5591. All files, statements, returns, reports, papers or documents of any kind whatsoever in the office of a county auditor or of a county board of revision or in the official custody or possession of such officer or board shall be open to public inspection. (106 v. 272, Sec. 101. W. L. Sec. 10.)

Notice to prosecuting attorney of violation of laws.

SEC. 5622. The tax commission of Ohio, county auditors and county boards of revision shall notify the prosecuting attorney of the proper county of any wilful violation of the laws relating to the assessment of property for taxation by persons, firms, partnerships, associations or corporations, for which a penalty, either civil or criminal, may be provided by law. (106 v. 264, Sec. 65. W. L. Sec. 49.)

Tax commission may order reassessment.

SEC. 5624-4. The tax commission of Ohio may order a reassessment of the real or personal property, or any class of either, in any district or subdivision thereof, when in its opinion, such property has been unequally or improperly assessed, to the end that all classes of property in such districts shall be assessed in compliance with the law. (106 v. 267 § 79.)

The term "subdivision" as used in section 5624-4, G. C., refers to the parts of an assessment district in the case where the county auditor, under authority of section 3350 G. C. (106 v. 251) assigns a part of said assessment district to an assistant assessor for the return of personal property and the assessment of such real property as may be required under section 5548, G. C., and said term applies to the parts of said assessment district as subdivided. Said term also refers to the "part" of an assessment district as mentioned in the above provision of section 5548, G. C., A. G. R. 1916.

How reassessment shall be made.

SEC. 5624-5. When a reassessment is ordered in any district or subdivision thereof, the assessor of such district, or an assistant assessor to be appointed by the auditor, shall proceed to make such reassessment in the manner provided by law for making original assessments. Provided, however, that if the tax commission of Ohio so orders, the county auditor shall, in the case of personal property, make such re-assessment by revising and correcting the statements and returns on file in his office without taking new statements or returns from the persons required by law to list or return personal property for taxation. (106 v. 267, Sec. 80. W. L. Sec. 63.)

The original assessing officers as to real and personal property are the elected assessors and their assistants, except when a reassessment is ordered by the tax commission as to a class of personal property, when, under section 5624-5 G. C., the reassessment may be made by the county auditor himself as an original assessing officer. The authority to make original assessments of real property is not vested in the county auditor by any provision of the Farrett-Whittemore Act (106 v. 246).

For powers of county auditor see sections 5399, 5400, 5401, 5571, 5573, and 5574, G. C. A. A. R. 1916.

Additional powers and duties.

SEC. 5624-12. In addition to the duties specifically imposed by law upon county auditors, assessors, assistant assessors, and county boards of revision, they and each of them shall perform such other duties relating to the assessment of property for taxation or the levy or collection of taxes as the tax commission of Ohio in the exercise of its powers may, from time to time, direct, and in the discharge of such duties they and each of them shall

exercise all and singular the powers in them vested by this act. (106 v. 270, Sec. 94. W. L. Sec. 46.)

Assessment officials may examine and make memoranda of all public records and accounts.

SEC. 5624-13. Each county auditor, assessor, assistant assessor, member of a county board of revision and each expert, clerk, or employe of a county board of revision may, at all reasonable times, examine and make memoranda from any and all records, books, papers, documents, statements or accounts of record or on file in any public office of any county, township, city, village, school district or special taxing district in the state, including the offices of justice of the peace, free of charge, and the officers thereof shall furnish information of any and all matters of record or on file in their respective offices, as may be required by such county auditor or member of a county board of revision. The tax commission of Ohio, or any person or persons employed by the commission for that purpose, shall have like powers, and in addition thereto may examine and make memoranda from any records, books, papers, documents, statements or accounts of record or on file in any office or department of the state, and all public officers, including officers of the state, shall furnish to the tax commission of Ohio information of any and all matters of record or on file in their respective offices, as may be required by the commission. Any expert, clerk or employe of a county auditor or a county board of revision or person employed by the tax commission of Ohio shall exhibit the written order of the county auditor, county board of revision or tax commission of Ohio, as the case may be, before being entitled to make such examination. Nothing in this act shall be construed or held to authorize the tax commission, or any of its agents or employes, or any county auditor or any assessor or board of revision, to examine the accounts or records of any banking or financial institution which is subject to official inspection under the laws of the state of Ohio or of the United States, nor to demand or receive any list of depositors, stock depositors, members or others who transact business in or with such institutions. (106 v. 264, Sec. 66. W. L. Sec. 52.)

Duty of auditor or board discovering property subject to tax in another county.

SEC. 5624-14. If any county auditor or county board of revision discovers the existence of any taxable property subject to be listed and assessed for taxation in another county, such county auditor or county board of revision shall notify the county auditor of the county in which such property is required to be listed and assessed and shall transmit to such county auditor by mail all information coming to their knowledge respecting such property. If any county auditor or county board of revision discovers or has reason to believe that property subject to be listed in their county is located in another county, or that the county auditor of any other county has the means of acquiring any information respecting such property, such county auditor or county board of revision shall notify the county auditor of such other county, who shall, upon request, make such inquiries and investigations as may be required and furnish the same to such county auditor or county board of revision. County auditors and county boards of revision shall have and exercise, in making the inquiries and investigations provided for in this section, all powers in them vested by any provisions of law. (106 v. 265, Sec. 68. W. L. Sec. 53.)

Prosecuting attorney legal adviser in matters of taxation.

SEC. 5624-15. The prosecuting attorney shall be the legal adviser of the county auditor in all matters relating to taxation and shall prosecute and defend all actions and proceedings in any court, in connection therewith, to which the county auditor or the county board of revision may be a party; and in all respects act as the attorney of the county auditor or the county board of revision, as the case may be. He shall, upon request of the county auditor or county board of revision, appear in any investigation or examination which either of them is authorized to make in such matters and examine the witnesses, or in any other manner aid them in such investigation or examination. The attorney general, on the request of the tax commission of Ohio, shall assist the prosecuting attorney in the performance of any duties required of him by this section. (106 v. 263, Sec. 64. W. L. Secs. 47, 48.)

CHAPTER SIX.

ASSESSING OFFICERS. (Continued.)

CRIMES AND OFFENSES.

SECTION		SECTION	
12919.	Fraudulent entry by auditor.	12924-6.	Political activity of officer or employee.
12924.	Violating rules of valuing property.	12924-7.	Divulging information acquired by auditor or member of board.
12924-1.	Refusal to fill blanks, exhibit books and papers.	12924-8.	Same; by assessor or employee.
12924-2.	Forfeiture.	12924-9.	Penalty for fraudulent valuation.
12924-3.	Refusal to obey order of tax commission.	12924-10.	Penalty for failure, neglect, refusal or evasion of duty.
12924-4.	Failure to list or value property.	13415.	Acting as agent for certain companies in default for taxes.
12924-5.	Each day of violation shall constitute separate offense.	13421-8.	Failure to make levy or furnish estimates.

Fraudulent entry of tax omission by county auditor.

SEC. 12919. Whoever, being a county auditor, fraudulently places upon the duplicate of a county, as a tax omission, an assessment reported to him by a ward or township assessor, made to such assessor prior to the third Monday of May by a taxpayer, or an assessment made by a board of equalization, or the amount of a return made by a corporation, joint stock company or other person required by law to make return to the auditor, or conspires with an assessor to increase the number or amount of tax omissions, if the amount thereof is thirty-five dollars or more, shall be imprisoned in the penitentiary not less than one year nor more than seven years, and if the amount thereof is less than thirty-five dollars, shall be fined not more than two hundred dollars or imprisoned not more than thirty days, or both. (R. S. Sec. 6973.)

Violating rules for valuing personal property.

SEC. 12924. Whoever, being an assessor of personal property, member of a board of equalization, county auditor, or other officer connected officially with the listing of personal property, willfully values such property as originally listed, or subsequently added to the tax list or duplicate, except in conformity to the provisions of the statute governing such valuation, shall be fined two hundred dollars. (R. S. Sec. 2739a.)

Refusal to fill blanks, exhibit books and papers.

SEC. 12924-1. Whoever, being an officer, agent or employee of any public utility, company, firm, person, co-partnership, corporation or association, subject to the provisions of any law which the tax commission of Ohio is required to administer, shall fail or refuse to fill out and return any blanks, as required by such law, or shall fail or refuse to answer any questions therein propounded, or shall knowingly or willfully give a false answer to any such question where the fact inquired of is within his knowledge, or who shall, upon proper demand, fail or refuse to exhibit to such commission or any commissioner or any person duly authorized, any book, paper, account, record or memoranda of such public utility, which is in his possession or under his control, shall be fined not more than one thousand dollars for each offense. (102 v. 224, § 154.)

Forfeiture.

SEC. 12924-2. A forfeiture of not less than five hundred dollars nor more than one thousand dollars shall be recovered from any such public utility, company, firm, person, co-partnership, corporation or association for each violation of the next preceding section, when such officer, agent or employee acted in obedience to the direction, instruction or request of such public utility, company, corporation or association or any general officer thereof. (102 v. 224, § 155.)

Refusal to obey order of tax commission.

SEC. 12924-3. Whoever violates any provision of a law, which the tax commission of Ohio is required to administer, or neglects or refuses to perform any duty therein required,

for which a penalty has not otherwise been provided, or neglects or refuses to obey any lawful requirement or order made by such commission, for every such violation, failure or refusal, shall be fined not less than twenty-five dollars nor more than one thousand dollars for each offense. In construing and enforcing the provisions of this section, the act, omission or failure of any officer, agent or other person acting for or employed by any public utility, company, firm, person, co-partnership, corporation or association acting within the scope of his employment, shall, in every case be the act, omission or failure of such public utility, company, firm, person, co-partnership, corporation or association. (102 v. 224, § 156.)

Failure to list or value property.

SEC. 12924-4. Whoever, being a member of the tax commission of Ohio, or an assessor or a member of a county board of equalization, or a person whose duty it is to list, value, assess or equalize real or personal property for taxation, shall knowingly or wilfully fail to list or return for assessment or valuation, any real estate or personal property, or knowingly or wilfully lists or returns for assessment or valuation any real or personal property at any other than its true value in money, or shall wilfully or knowingly fail to equalize any real or personal property according to its true value in money, shall be fined not less than fifty dollars nor more than five hundred dollars and in addition thereto, if he be an officer, shall forfeit his office or position. (102 v. 224, § 157.)

Each day of violation shall constitute separate offense.

SEC. 12924-5. Every day during which any public utility, company, corporation, association, firm, co-partnership, officer, or individual, subject to the provisions of any law which the tax commission of Ohio is required to administer, or any officer, agent or employe thereof shall wilfully fail to observe and comply with any order or direction of such commission or to perform any duty enjoined by such law, shall constitute a separate and distinct offense. (102 v. 224, § 158.)

Political activity cause for removal of officer or employe.

SEC. 12924-6. An assessor, assistant assessor, member of a county board of revision, member of the tax commission of Ohio, or any assistant, expert, clerk or other employe of a county board of revision or the tax commission of Ohio, who holds any position on or under any committee of a political party, or who subscribes or pays any money or other thing of value to any person or organization for the purpose of promoting or defeating or otherwise influencing any legislation, or who circulates any initiative or referendum petition, shall be removed from his office or employment in the manner prescribed for removals by this act, and shall be fined not more than one hundred dollars for each such offense. (106 v. 271, Sec. 96.)

Penalty for divulging information acquired as auditor or member of board.

SEC. 12924-7. Whoever, being a county auditor or a member of a county board of revision, divulges, except in the performance of his duties or upon the order of the tax commission of Ohio, or when called upon to testify in any court or proceeding, any information acquired by him in the exercise of the powers in him vested by any provision of this act or while claiming to exercise any such powers, in respect to the transactions, property or business of any person, company, firm, corporation, association or partnership, shall be fined not less than fifty dollars nor more than three hundred dollars, and shall thereafter be disqualified from acting in any official capacity whatever in connection with the assessment or collection of taxes. (106 v. 271, Sec. 97.)

Penalty for divulging information acquired as an assessor or employe.

SEC. 12924-8. Whoever, being an assessor, assistant assessor or an expert, clerk or employe of a county auditor or county board of revision, divulges, except in the performance of his duties or upon the order of the tax commission of Ohio or in his report to the county auditor or to the county board of revision, as the case may be, or when called upon to testify in any court or proceeding, any information acquired by him in the exercise of the powers in him vested by any provision of law, or while claiming to exercise such powers in respect to the transactions, property or business of any person, company, firm, corporation, association or partnership, shall be fined not less than fifty dollars nor more than three hundred dollars, and shall thereafter be disqualified from acting in any official capacity whatsoever in connection with the assessment or collection of taxes. (106 v. 271, Sec. 98.)

Penalty for fraudulent valuation.

SEC. 12924-9. Whoever, being an assessor, assistant assessor, county auditor or a member of a county board of revision, or a deputy county auditor, or an expert, clerk or employe of a county board of revision, wilfully and fraudulently values any real or personal property for taxation, except at the true value thereof in money, as provided by law, shall be fined not less than two hundred dollars nor more than one thousand dollars. (106 v. 271, Sec. 99.)

Penalty for failure, neglect, refusal or evasion of duty.

SEC. 12924-10. Whoever, being a county auditor or a member of a county board of revision or an assessor, assistant assessor, expert, clerk, or other employe of a county auditor or a county board of revision, refuses or knowingly neglects to perform any duty enjoined on him by law, or consents or connives at any evasion of the provisions of this act or of title 1, part second of the General Code, whereby property required to be assessed is unlawfully exempted, or the valuation thereof entered at less than its true value, for each such neglect, refusal, consent or connivance, shall be fined not less than one hundred dollars nor more than one thousand dollars. (106 v. 271, Sec. 100. W. L. Sec. 45.)

Acting as agent, etc., for certain companies in default of taxes.

SEC. 13415. Whoever, directly or indirectly, acts as agent, or transacts any business on account of or for the benefit of an express, telegraph, telephone or insurance company, against which taxes have been assessed in any county in this state and remain unpaid for twenty days after the time provided by law for the payment thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail and fed on bread and water only not more than thirty days, or both. The payment of such unpaid tax by an agent or other person, shall not be a violation of this section. (R. S. Sec. 2843.)

Failure to make levy or furnish estimates; penalty.

SEC. 13421-8. Whoever, being charged with the duty of making any levy or furnishing any estimates or budgets requesting any levy or allowance for the construction, improvement, maintenance or repair of any public highway, bridge or culvert, shall fail to make such levy or allowance, or furnish such estimate, budget or request shall be fined not more than two hundred dollars, nor less than twenty-five dollars. (106 v. 660, § 285.)

CHAPTER SEVEN.

CONSTITUTIONAL PROVISIONS.

ARTICLE TWO.

LEGISLATIVE.

SECTION

1. In whom power is vested. Initiative and Referendum.
- 1e. Use of Initiative and Referendum limited.

ARTICLE TWELVE.

FINANCE AND TAXATION.

1. Poll Tax.
2. Taxation by uniform rule; exemption.
3. Banks and bankers.
4. Revenue.
5. Levying of taxes.

SECTION

6. Debt for internal improvement.
7. Taxation of inheritances.
8. Taxation of incomes.
9. Apportionment of inheritance and income tax.
10. Taxation of franchise and production of minerals.
11. Sinking fund.

ARTICLE THIRTEEN.

CORPORATIONS.

4. Corporate property subject to taxation.
6. Organization of cities, etc.

ARTICLE II.

LEGISLATIVE.

In whom legislative power is vested. Initiative and Referendum.

SEC. 1. The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided, and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws. (As amended September 3, 1912.)

Original § 1 read as follows: "Sec. 1. In whom legislative power is vested. The legislative power of this state shall be vested in a general assembly, which shall consist of a senate, and a house of representatives. See Const. 1802, Art. 1, § 1.

The same provision, in nearly the same words, is found in the former constitution. That includes all legislative power which the object and purposes of the state government may require, and we must look to other provisions of the constitution to see how far, and to what extent, legislative direction is qualified or restricted. Hence the difference between the constitution of the United States and a state constitution such as ours. In the former we look to see if the power is expressly given; in the latter to see if it is denied or limited: *Baker v. Cincinnati*, 11 O. S. 534.

By the terms of our state constitution, "the legislative power of the state" is declared to be "vested in the general assembly." This grant of power is general in its terms, not special; it embraces all such legislative power as the people of the state could, under the federal constitution confer — the whole "legislative power of the state." The limitations upon the exercise of the power thus broadly conferred, are special, and are to be found in other parts of the same instrument: *Baker v. City of Cincinnati*, 11 O. S. 534.

Whatever power of taxation resides in the general assembly, does so as an incident of the general legislative authority delegated to that body by Art. II, § 1: *Board of Education v. State*, 51 O. S. 531.

The power to impose taxes is a legislative power, and is vested in the general assembly by § 1, of Art. II, of the constitution: *State, ex rel., v. Guilbert*, 70 O. S. 229; see, to the same effect, *Telegraph Co. v. Poe*, 61 Fed. 449, 8 O. F. D. 158; *Insurance Co. v. Commissioners*, 99 Fed. 846, 13 O. F. D. 198.

In our present constitution, as well as in the former, the general grant of legislative authority includes the power of taxation in all its forms. Restrictions upon its exercise are to be looked for in other parts of the instrument: *Hill v. Higdon*, 5 O. S. 243.

The general grant of legislative power vested in the general assembly by this section includes the power to collect revenue for public purposes and the limitations on the exercise of this power are to be found in other provisions of this instrument, and in the constitution of the United States: *Telegraph Co. v. Mayer*, 28 O. S. 521.

The power of taxation is limited, but not conferred by Art. XII, § 2, of the constitution. It is included in the legislative power conferred on the general assembly by Art. II, § 1, of that instrument. The limitation is on the power to raise revenue by the taxation of property; all other recognized modes of exercising the power may be resorted to by the legislature whenever in its wisdom it may be deemed necessary: *Adler v. Whitbeck*, 44 O. S. 539.

The power to authorize assessments, as distinguished from taxes proper, is comprehended in the general grant of legislative power to the general assembly: *Reeves v. Treasurer*, 8 O. S. 333.

The power to authorize assessments for the construction of free turnpike roads, and the opening of drains, as well as for the improvement of streets and sidewalks, exists to the same extent under the present constitution as under that of 1802: *Reeves v. Treasurer*, 8 O. S. 333.

The legislature, in the exercise of the general power of taxation, as distinguished from the power of local assessment, may create a special taxing district without regard to municipal or political subdivisions of the state, and may levy a tax on all property within such district by a uniform rule, according to its true value in money, for the purpose of defraying the expenses of constructing and maintaining public roads therein: *Bowles v. State*, 37 O. S. 35.

A per capita tax on dogs is not inhibited by the constitution. While the purpose of a statute imposing such tax is the protection of woolgrowers, it is an exercise of the police power, and not of the taxing power vested in the general assembly: *Holst v. Roe*, 39 O. S. 340.

The legislative branch has the exclusive power of taxation. It may in the absence of constitutional restrictions delegate the taxing power to municipalities in such measure as it deems expedient, but it can not confer any greater power than the state itself possesses, and it must observe the restrictions and limitations of the organic law: *State, ex rel., v. Toledo*, 48 O. S. 112.

It was at first held that a provision in the charter of a corporation fixing the rate of taxation upon its property was a valid contract which the state had the right to make under the provisions of the constitution of 1802—*State v. Commercial Bank*, 7 O. (pt. 1) 125. Subsequently an act was passed, the operation of which was to increase the taxes of certain banks over that fixed in their charters, and the supreme court of the state then held (*Bank v. Debolt*, 1 O. S. 591) that as the power of taxation is a part of the legislative sovereignty of the state, and is not the subject of contract, of barter, or sale by the legislature, such charter contracts were void; see, to the same effect, *Debolt v. Trust Co.*, 1 O. S. 563; *Knoup v. Piqua Bank*, 1 O. S. 603; *Toledo Bank v. Bond*, 1 O. S. 622; *Plank Road Co. v. Husted*, 3 O. S. 578; *Bank v. Wilbor*, 7 O. S. 481; *Skelly v. Bank*, 9 O. S. 606.

The supreme court of the United States, however, held such contracts to be valid: *Dodge v. Woolsey*, 59 U. S. (18 How.) 331; *Bank v. Debolt*, 59 U. S. (18 How.) 380; *Bank v. Thomas*, 59 U. S. (18 How.) 384; *Piqua Bank v. Knoup*, 57 U. S. (16 How.) 369.

The supreme court of Ohio eventually yielded to the authority of the supreme court of the United States upon the specific statutory contracts for exemption, which had been considered by the supreme court of the United States: *State, ex rel., v. Moore*, 5 O. S. 444; *Bank v. Lewis*, 5 O. S. 447.

It is now well settled that under the present constitution the taxing power, which constitutes a branch of the legislative power, and which is of vital importance, and essential to the existence of government, can not be surrendered or abandoned, either in whole or in part, by the legislature, to promote private and individual interests, so as to limit the power and control of future legislation over it; but like the right of eminent domain, and the right of control over existing laws by amendment and repeal, both of which are also vital and essential prerogatives of the legislative power, must continue in unabridged subservency to the public safety and welfare, the original and paramount purpose of the delegation of all civil power by the people: *Bank v. Bond*, 1 O. S. 622; see, also, *Debolt v. Trust Co.*, 1 O. S. 563; *Bank v. Debolt*, 1 O. S. 591; *Knoup v. Piqua Bank*, 1 O. S. 603; *Plank Road Co. v. Husted*, 3 O. S. 578; *Bank v. Wilbor*, 7 O. S. 481; *Skelly v. Bank*, 9 O. S. 606.

Use of initiative and referendum limited.

SEC. 1e. The powers defined herein as the "initiative" and "referendum" shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to person property. (Adopted Sept. 3, 1912.)

ARTICLE XII.

FINANCE AND TAXATION.

This article as originally adopted contained only six sections, corresponding to the first six sections of the present article. Of these Section 2 was amended in 1905. No other changes were made until September 3, 1912, when Sections 1, 2 and 6 were amended and Sections 7, 8, 9, 10 and 11 were added to the article.

The provisions of Art. XII, of the constitution of Ohio, are not grants of power to the legislature, but limitations and restrictions on the general powers conferred by Art. II, § 1. Thus, Art. XII, which relates to taxation, is not a delegation of authority to raise revenue, but a limitation of that power as conferred by Art. II, § 1: *Telegraph Co. v. Mayer*, 28 O. S. 521.

In forming the constitution of this state, the necessity for taxation was recognized on the one hand, and the dangers incident to the exercise of the power on the other; and to provide what was necessary for the one, and against the dangers of the other, Art. XII, of the present constitution was adopted. It prohibits one form of odious taxation and forbids the contracting of debts by the state for internal improvements, which might be so used as to create a necessity for oppressive taxation: *Chamberlain v. Cleveland*, 34 O. S. 551.

Before the adoption of the present constitution the whole matter of taxation was committed to the discretion of the general assembly. It might be levied upon such property and in such proportion as that body saw fit. The right to make exceptions and exemptions was unquestionable. But this discretion no longer exists. The public burdens are made to rest upon the property of the state, and whenever money is to be raised by taxation, the positive injunction is, that laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money: *Zanesville v. Richards*, 5 O. S. 589.

The provisions of this article are not grants of power to the legislature, but limitations and restrictions on the general powers conferred by § 1, Art. II: *Telegraph Co. v. Mayer*, 28 O. S. 521.

Poll tax.

SEC. 1. No poll tax shall ever be levied in this state, or service required, which may be commuted in money or other thing of value. (As amended September 3, 1912.)

Original § 1 read as follows: "Sec. 1. [Poll tax.] The levying of taxes, by the poll, is grievous and oppressive; therefore, the general assembly shall never levy a poll tax, for county or state purposes. (See Const. 1802, Art. VIII, § 23.)"

This section forbids a poll tax as a possible method of taxation: *Adler v. Whitbeck*, 44 O. S. 589.

The prohibition upon a poll tax shows that the property, and not the person of the owner, is the subject of taxation: *Creech v. Railway*, 2 O. N. P. 164, 3 O. D. (N. F.) 265.

Taxation by uniform rule; exemption.

SEC. 2. Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money, excepting all bonds at present outstanding of the state of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and the means of instruction in connection therewith, which bonds so at present outstanding shall be exempt from taxation; but burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value five hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published as may be directed by law. (As amended September 3, 1912.)

Section 2, as amended November 7, 1905, read as follows: "Sec. 2. [Taxation by uniform rule; exemption.] Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property according to its true value in money, excepting bonds of the state of Ohio, bonds of any city, village, hamlet, county, or township in this state, and bonds issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, which bonds shall be exempt from taxation; but burying grounds, public schoolhouses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published, as may be directed by law. [As amended November 7, 1905; in effect January 1, 1906: 97 v. 652.]"

Original § 2 read as follows: "Sec. 2. [Taxation by uniform rule.] Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money; but burying grounds, public schoolhouses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property, to an amount not exceeding in value two hundred dollars, for each individual, may, by general laws, be exempted from taxation; but all such laws shall be subject to alteration or repeal; and the value of all property, so exempted, shall, from time to time, be ascertained and published, as may be directed by law."

Amendments—Under this section as originally adopted public bonds were taxable. This section was amended November 7, 1905, by the insertion of the following provision: "Excepting bonds of the state of Ohio, bonds of any city, village, hamlet, county or township in this state, and bonds issued in behalf of the public schools of Ohio and the means of instructions in connecting therewith, which bonds shall be exempt from taxation". The effect of this amendment was to exempt all public bonds from taxation. The section was again amended September 3, 1912, and the provision above quoted was changed to read as follows: "Excepting all bonds at present outstanding of the state of Ohio or of any city, village, hamlet, county, or township in this state or which have been issued in behalf of the public schools in Ohio and the means of instruction in connection therewith, which bonds so at present outstanding shall be exempt from taxation". The effect of this amendment is to make all public bonds issued after its taking effect on January 1, 1913 taxable, while such bonds outstanding prior to that date are exempt from taxation.

Other changes in this section made by the amendment of September 3, 1912 were, the substitution of the phrase "institutions used exclusively for charitable purposes," for the phrase "institutions of purely public charity," and changing the amount of personal property that may be exempted for each individual from "two hundred dollars" to "five hundred dollars"

This section does not tax property: it only provides that laws shall be passed taxing all property, real and personal, by a uniform rule according to its true value in money. Neither does this section attempt to exempt property from taxation, but it defines what property may be exempted by general laws of the legislature: *Martindill v. Sanger*, 8 O. N. P. 506, 11 O. D. (N. P.) 727.

Article 12, Section 2, of the constitution, is a limitation upon the taxing power, so far as the same applies to taxation of property, both as to the method of taxation and the character and amount of property which may be lawfully exempted from taxation, and furnishes the governing principle for all laws authorizing taxes for general revenue on property: *State, ex rel., v. Guilbert*, 70 O. S. 229.

The constitution provides that laws shall be passed taxing by a uniform rule all property. This provision does not execute itself. If no law has been enacted, no tax can be imposed. *Sebastian v. Ohio Candle Company*, 27 O. S. 463 citing *Frazer v. Siebern*, 16 O. S. 615.

Without express authority of law, no tax, either for state, county, township, or corporation purposes, can be levied; and we see no reason to doubt that this section of the constitution is equally applicable to, and furnishes the governing principle for, all laws authorizing taxes to be levied for either purpose. The great object of the provision was to secure equality and uniformity in the imposition of these public burdens. The convention was very well aware that much the largest part would be required to answer the purposes of these local subdivisions; and equally well that it could only be levied as the general assembly should provide: *Zanesville v. Richards*, 5 O. S. 589.

Section 2, of Art. XII, is not a grant of power, but a regulation of the power already granted in the first section of the second article. The expression is, "laws shall be passed," not that the "general assembly shall have the power to pass." So of every provision in the twelfth article, they either prohibit or regulate the exercise of the power of taxation in specified instances: *Baker v. Cincinnati*, 11 O. S. 534.

The power of taxation is limited, but not conferred by § 2, Art. XII, of the constitution. The limitation is on the power to raise revenue by the taxation of property; all other recognized modes may be resorted to by the legislature. The power of taxation is included in the legislative power conferred on the general assembly by § 1, Art. II, of the constitution: *Adler v. Whitbeck*, 44 O. S. 539.

This section is not a grant of power, but a regulation or limitation rather, of the taxing power comprised in the general legislative power of the state vested in the general assembly: *Anderson v. Brewster*, 44 O. S. 576.

This section does not prevent the legislature from obtaining general revenue from other sources than taxation on property: *Alter v. Cincinnati*, 56 O. S. 47.

An express direction to impose a tax on all property by a uniform rule, does not necessarily exclude taxation upon that which is not property, or cover the whole ground included within the limits of the taxing power: *Zanesville v. Richards*, 5 O. S. 589; *Gas Light & Coke Co. v. State*, 18 O. S. 237.

The property of every person, however, absolute the tenure by which it is held, must be liable to bear an equal and just proportion of the public burdens, by way of taxation, in return for the protection and advantages afforded by the government, and that proportion of taxation must be determined by the legislative power, which extends to all persons and property within the state: *Bank v. Bond*, 1 O. S. 622.

This section applies to all taxes for the purpose of general revenue whether for the state, the county, the township or municipal corporation: *Zanesville v. Richards*, 5 O. S. 589.

The general assembly has power (except as limited by § 18, of the schedule to the constitution) to regulate occupations by license, and to compel, by imposition of a fine, payment of a reasonable fee, where a special benefit is conferred by the public upon those who follow an occupation, or where it is injurious or dangerous to the public. Accordingly, statutes which authorize municipal corporations to impose license fees upon livery stables, dealers in secondhand articles and upon theatres, are valid: *Marmet v. State*, 45 O. S. 63.

A statute which charges a certain percentage of the capital stock of corporations which consolidate, is not rendered invalid by this section: *Ashley v. Ryan*, 49 O. S. 504 [affirmed in *Ashley v. Ryan*, 153 U. S. 456 8 O. T. D. 215].

A charge of a certain percentage of the capital stock of a corporation, is a franchise tax and not a tax upon property, and is valid and constitutional: *Southern Gum Co. v. Laylin*, 66 O. S. 578.

Section 2, of Art. XII, has established the principles upon which all taxes for general revenue purposes must be levied; but it does not extend to what was then, and is still, well known as special assessments, because § 6, of Art. XIII, shows that they were not intended to be included: *Hill v. Hiedon*, 5 O. S. 243.

An assessment levied for local improvements upon land benefited thereby and in proportion to the special benefits conferred upon such land by such improvement, is not a tax; within the meaning of this section and is not rendered invalid thereby: *Zanesville v. Richards*, 5 O. S. 589; *Reeves v. Treasurer*, 8 O. S. 333; *Thomson v. Treasurer*, 11 O. S. 678; *Sessions v. Crunkilton*, 20 O. S. 349; *Chamberlain v. Cleveland*, 34 O. S. 551; *Lima v. Cemetery Association*, 42 O. S. 128.

A statute on the subject of taxation must be construed, if possible, so as to avoid inequality: *Zanesville v. Richards*, 5 O. S. 589.

This section forbids exemptions of property not authorized by the constitution: *Zanesville v. Richards*, 5 O. S. 589.

The fundamental rule of the constitution requires that a uniform rate per cent. to be levied upon all property, according to its true value in money, within the limits of the local subdivision for which the revenue is collected; subject only to the exemptions specially provided for in this section: *Zanesville v. Richards*, 5 O. S. 589.

Taxation by a uniform rule will require that the rate of taxation shall be uniform, and such uniformity co-extensive with the territory to which it applies, whether the tax is a state, county, township or city tax; and that every species of property not exempt from taxation, whether lands, goods, money or choses in action, and however used or employed, shall go upon the tax duplicate at its true value in money: *State ex rel. v. Jones, Auditor*, 61 O. S. 492.

All property not exempt must be taxed, and the value placed on it for that purpose shall be its true value in money, and any statute prescribing any other rule or standard would be repugnant to the constitutional provision and therefore void: *McCurdy v. Prugh*, 59 O. S. 465.

By Section 2 of Article 12, the power to pass special laws as to the taxation of property is taken away: *Hlxon v. Burson et al.*, 54 O. S. 470.

The object of the language of the constitution under consideration was comprehension, not exclusion. The words, "all real and personal property," therefore, in § 2, are to be taken in their most comprehensive legal import, including every kind of real and personal property whatsoever, not excepting the several classes of personal property expressly mentioned in the first clause of the section: *Bank v. Hines*, 3 O. S. 1.

Statutory provisions whereby different classes of property are listed and valued for taxation in and by different modes and agencies, are not necessarily in conflict with this section: *Wagoner v. Loomis*, 37 O. S. 571.

Taxation laws do not attempt to arrive at exact equality, nor to provide that equivalents shall be of exactly the same value. A substantial equality is all that they attempt to reach: *Trust Company v. Lander*, 10 O. C. D. 452.

When a rule of valuation is adopted which is intended to operate unequally, and is applied, not solely to one individual, but to a large class of individuals or corporations, equity will interfere to restrain the operation of the unconstitutional exercise of power: *Cummings v. Bank*, 101 U. S. 153, 4 O. F. D. 578.

The rule, or principle, of unequal valuation of different classes of property for taxation, adopted by local boards of assessment, is in conflict with the constitution of Ohio, and works manifest injustice to the owners of bank shares: *Bank v. Hines*, 3 O. S. 1 [approved and followed, *Cummings v. Bank*, 101 U. S. 153, 4 O. F. D. 578].

The purpose of the Ohio constitution and statutes passed in pursuance thereof, as frequently declared by the supreme court, is to tax by a uniform rule all property owned or held within the state; and a narrow construction of a statute, which will defeat this purpose, will not be adopted where any other is possible: *Insurance Co. v. Bowland*, 196 U. S. 611, 14 O. F. D. 543.

In levying a tax for the construction of a road, all property within the taxing district must be taxed by a uniform rule, according to its true value in money: *Bowles v. State*, 37 O. S. 35.

An act, "to authorize the commissioners of certain counties to locate and construct turnpike roads," which exempts certain lands therein named from taxation for the improvements therein provided for, is in conflict with § 2, Art. XII, of the constitution, and is therefore void: *Fields v. Commissioners*, 36 O. S. 476.

The state has power to tax property within its boundaries, irrespective of the domicile of the owner: *Assurance Co. v. Halliday*, 126 Fed. 257, 63 C. C. A. 271, 14 O. F. D. 73, 1 O. L. 643 [affirming *Assurance Co. v. Halliday*, 110 Fed. 259, 13 O. F. D. 682].

Our state constitution makes it mandatory upon the lawmaking power that "laws shall be passed taxing by a uniform rule all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise," and also all real and personal property, according to its true value in money: *Crech v. Railroad*, 2 O. N. P. 164, 3 O. D. (N. P.) 265.

Choses in action are to be listed at their true value. If a note, for instance, is wholly worthless, it is not to be listed at all; if it is of some value, but less than its face, it is to be listed at what it is worth: *Bank v. Hines*, 3 O. S. 1.

Promissory notes, book accounts and other credits are property and fall within that provision of § 2, Art. XII, of the constitution of this state, which declares that "all real and personal property" shall be taxed according to its true value in money. Where property has been valued for taxation and taxed at its true value in money, it is no defense against the payment of such tax that all other property within the state, through the mistake or imperfect judgment of the taxing officers and equalizing boards, has been valued for taxation materially below its true value in money: *McCurdy v. Prugh*, 59 O. S. 465.

Where the manufacture of an article of tangible personal property is protected by a patent, and such article when manufactured is not put on the market for sale, but its ownership retained by the manufacturer in himself, and the article leased or rented by him to another for a valuable consideration, payable to him, it should be taxed as his property at "its true value in money," although that value is enhanced by reason of the patent. Its true value in money for taxation is the value that attaches to it in his hands. Earnings or rental value of such article is one of the circumstances to be taken into consideration in ascertaining the true value in money: *State, ex rel., v. Halliday*, 61 O. S. 352.

In this section the word "public" is used, in some instances, to describe the ownership of property, and in others, as descriptive of the use to which the property is applied; and the term "public schoolhouses" means such schoolhouses as belong to the public, and are designed for schools established and conducted under public authority: *Gerke v. Purcell*, 25 O. S. 229.

A library association, incorporated under the laws of this state, whose objects and purposes are, "the diffusion of useful knowledge, and the acquirement of the arts and sciences, by the establishment of a library of scientific and miscellaneous books for general circulation, and a reading room, lectures and cabinets; open to all persons, without distinction, upon equal terms, and the income and revenue of which are devoted exclusively to such objects and purposes, is" an institution of purely public charity within the meaning of the sixth clause of act of March 21, 1864: *Library Association v. Pelton*, 36 O. S. 253.

An exemption from taxation does not exempt from assessment for a local improvement: *Lima v. Cemetery Association*, 42 O. S. 128.

In a general sense, a tax is an assessment, and an assessment is a tax; but there is a well-recognized distinction between them, an assessment being confined to local impositions upon property for the payment of the cost of public improvements in its immediate vicinity,

and levied with reference to special benefits to the property assessed: *Lima v. Cemetery Association*, 42 O. S. 128.

Taxes upon business may be imposed or not, in the discretion of the general assembly; but the constitution requires the general assembly to pass laws taxing property, and it is not within the power of the general assembly to exempt or except property from taxation beyond the exemptions provided for in § 2, Art. XII, of the constitution: *Assurance Co. v. Halliday*, 127 Fed. 830, 14 O. F. D. 305.

Shares of stock in a foreign corporation, a small part of the property of which corporation is subject to taxation in Ohio, are not exempt from taxation, if owned by residents of Ohio: *Sturges v. Carter*, 114 U. S. 511, 5 O. F. D. 428.

The real estate belonging to an institution of purely public charity is exempt from taxation only when used exclusively for charitable purposes, and if such real estate is rented for commercial and residence purposes it is not exempt, although the income arising from such use is devoted wholly to the purpose of charity.

Such property was not exempt under the language of the constitution prior to its amendment in 1912 nor is it exempt under the provisions of Section 2, Article 12 as amended September 3, 1912. *The Benjamin Rose Institute v. Meyers, Treasurer, et al.* 92 O. S. 000.

Section 5353, General Code, when enacted and when this suit was brought, was within the authority granted to the general assembly by Section 2, Article XII of the Constitution, as then in force, and exempted from taxation the personal property of institutions of purely public charity, including endowment funds which belong exclusively to them and which, with the income arising therefrom, are devoted solely to their support.

Whether such property is exempt under the amendment of that section adopted in September 1912, which changed the phrase "institutions of purely public charity" and substituted for it the phrase "institutions used exclusively for charitable purposes", was not involved in this case and was not decided: *Meyers, Treasurer, et al., v. The Benjamin Rose Institute*, 92 O. S. 000.

Bonds issued as the obligations of a road district are not included within those enumerated in Article XII, Section 2 of the Constitution of Ohio and are, therefore not exempt from taxation. *A. G. R. 1912, 1362.*

BANKS AND BANKERS.

SEC. 3. The general assembly shall provide, by law, for taxing the notes and bills discounted or purchased, moneys loaned, and all other property, effects, or dues, of every description, (without deduction,) of all banks, now existing, or hereafter created, and of all bankers, so that all property employed in banking, shall always bear, a burden of taxation, equal to that imposed on the property of individuals.

"This section was inserted that there might be no doubt how existing as well as future banks and bankers, whether incorporated or unincorporated, were to be taxed; that there might be no doubt what property of theirs was to be the object of taxation; and further, to deprive them of even the two hundred dollar exemption which may be permitted to individuals under § 2. And hence it is, that we find in it the words 'without deduction':" *Bank v. Hines*, 3 O. S. 1.

This section imperatively requires that all property effects and dues of every description, belonging to banks should be taxed: *Bank v. Hines*, 3 O. S. 1.

The right granted to a state to tax shares of national banks, can not be exercised by a state unless it imposes upon the moneyed capital in the hands of individual citizens of the state, a tax at least equal in amount upon the same valuation, as is imposed upon national bank shares. The shares of a bank are taxed, and not the property of the bank, except its real estate. The limitations in § 3, Art. XII, prohibit double taxation of the property of banks, bankers and corporations: *Trust Co. v. Lander*, 62 O. S. 266 [affirming *Trust Co. v. Lander*, 19 O. C. C. 271, 10 O. C. D. 452].

In the administration of our tax laws, the holder of national bank shares has no right under the statutes, state and national, to deduct the legal bona fide debts from the value of such shares, but he is legally bound to pay tax upon the assessed value of such shares without deduction on account of such debts; property of this sort is "stock" and not "credits"; *Chapman v. Bank*, 56 O. S. 310 [following and approving *Niles v. Shaw*, 50 O. S. 370].

Revenue.

SEC. 4. The general assembly shall provide for raising revenue, sufficient to defray the expenses of the state, for each year, and also a sufficient sum to pay the interest on the state debt.

Under the provisions of Section 4, Article XII of the constitution of this state, and of Section 5626, General Code, which conforms to the section of the constitution above named, the general assembly of Ohio is the only authority that can levy taxes for state purposes and provide by law the sum or sums to be raised therefore: *State, ex rel., v. Edmondson*, 89 O. S. 93.

Keeping in view the difference between state debts and expenses, and the debts and expenses of her subdivisions, it is provided in this section that "The general assembly shall provide for raising revenue, sufficient to defray the expenses of the state, for each year, and also a sufficient sum to pay the interest on the state debt: *Cass v. Dillon*, 2 O. S. 607.

By this section the general assembly is imperatively commanded "to provide for the raising of revenue sufficient to defray the expenses of the state for each year." It was, no doubt, intended by this provision, that payment should go hand in hand with expenses: *State v. Medbery*, 7 O. S. 522.

The general assembly is authorized by this section to meet and pay the expense of maintaining the state militia. Furnishing an armory for the state militia, and the maintenance thereof, can not be at the expense of a county: *State, ex rel., v. Brinkman*, 7 O. C. C. 165, 3 O. C. D. 710; see, also, *Hubbard v. Fitzsimmons*, 57 O. S. 436.

Levying of taxes.

SEC. 5. No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied.

Cited: *State, ex rel., v. Harrison*, 81 O. S. 98; *Commissioners v. Savings Institution*, 119 Fed. 36, 55 C. C. A. 614; 15 O. F. D. 33.

The power of taxation being a sovereign power, can only be exercised by the general assembly when, and as conferred, by the constitution; and by municipal corporations only when unequivocally delegated to them by the legislative body: *Mays v. Cincinnati*, 1 O. S. 268.

It is not necessary that the object should be stated in the very statute imposing the tax. It is sufficient, we apprehend, if the object distinctly appears from the statute read in connection with some other provision found elsewhere in the statutes of the state: *Ashley v. Ryan*, 49 O. S. 504.

Debt for internal improvement.

SEC. 6. Except as otherwise provided in this constitution the state shall never contract any debt for purposes of internal improvement. (As amended September 3, 1912.)

Original § 6 read as follows: "Sec. 6. [Debt for internal improvement.] The state shall never contract any debt for purposes of internal improvement."

See Art. VIII, § 4.

This restriction applies to the state alone, and not to her subdivisions: *Cass v. Dillon*, 2 O. S. 607.

This section, it is quite evident, was not intended to prohibit the construction of railroads by municipal corporations, nor, indeed, to prohibit any species of public improvements: *Walker v. Cincinnati*, 21 O. S. 14.

Taxation of inheritances.

SEC. 7. Laws may be passed providing for the taxation of the right to receive, or to succeed to, estates, and such taxation may be uniform or it may be so graduated as to tax at a higher rate the right to receive, or to succeed to, estates of larger value than to estates of smaller value. Such tax may also be levied at different rates upon collateral and direct inheritance, and a portion of each estate not exceeding twenty thousand dollars may be exempt from such taxation. (Adopted September 3, 1912.)

Taxation of incomes.

SEC. 8. Laws may be passed providing for the taxation of incomes, and such taxation may be either uniform or graduated, and may be applied to such incomes as may be designated by law; but a part of each annual income not exceeding three thousand dollars may be exempt from such taxation. (Adopted September 3, 1912.)

Apportionment of inheritance and income tax.

SEC. 9. Not less than fifty per centum of the income and inheritance taxes that may be collected by the state shall be returned to the city, village or township in which said income and inheritance tax originate. (Adopted September 3, 1912.)

Taxation of franchises and production of minerals.

SEC. 10. Laws may be passed providing for excise and franchise taxes and for the imposition of taxes upon the production of coal, oil, gas and other minerals. (Adopted September 3, 1912.)

While there is no express limitation upon the power of the general assembly to tax privileges and franchises, such power is impliedly limited by those provisions of the constitution that private property shall ever be held inviolate—but subservient to the public welfare, that government is instituted for the equal protection and benefit of the people, and that the constitution is established to promote our common welfare: *Gum Co. v. Laylin*, 66 O. S. 578.

By reason of the implied limitations of the constitution, a tax on privileges and franchises can not exceed the reasonable value of the privilege or franchise originally conferred, or its continued value hereafter. The determination of such values rests largely in the general assembly, but finally in the courts: *Gum Co. v. Laylin*, 66 O. S. 578.

Sinking fund.

SEC. 11. No bonded indebtedness of the state, or any political subdivisions thereof, shall be incurred or renewed, unless, in the legislation under which such indebtedness is incurred or renewed, provision is made for levying and collecting annually by taxation an amount sufficient to pay the interest on said bonds, and to provide a sinking fund for their final redemption at maturity. (Adopted September 3, 1912.)

Under article XII, section 11 of the constitution, as amended, serial bonds may be issued, and provision for the annual levy of taxes for the retirement of the indebtedness so incurred considered as a unit, the levies being equal in amount and distribution over the entire number of years between the incurring of the indebtedness and the date of maturity of the last series, would be a sufficient compliance with the constitutional requirement that provision be made

for the annual levy of an amount sufficient to provide a sinking fund, although the series might so mature as practically to preclude any accumulation of a technical fund and to require the principal to be expended in the retirement of the maturing bonds as fast as it is levied. The phrase "annual levy * * * of taxes * * * sufficient to provide * * * a sinking fund" is interpreted as requiring that the burden of taxation on account of a debt incurred at a given time shall be evenly distributed during the life of the indebtedness, considered as a unit; and not as requiring the accumulation of a "sinking fund" in the strict and technical sense. *A. G. R. 1914, page 1224.*

The constitutional amendments effective January 1, 1913, do not affect the validity of city ordinance authorizing bond issue, passed June 17, 1912. Provisions of Section 11, Article 12, constitution (1912) for interest and redemption are mandatory on subsequent taxing officials during term of bonds. Interests and sinking fund charges must be determined by the taxing officials at the time the levy is made: *Link v. Karb, Mayor, 89 O. S. 326.*

ARTICLE XIII.

CORPORATIONS.

Corporate property subject to taxation.

SEC. 4. The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals.

There was no absolute necessity for this section, for without it § 2, Art. XII, would have embraced existing and future corporations. This section, however, was inserted out of abundant caution, that there might be no doubt either as to existing or future corporations, what would be the rule of taxation: *Treasurer v. Bank, 47 O. S. 503*; see, also, *Bank v. Hines, 3 O. S. 1.*

A corporate franchise, being a mere privilege or grant of authority by the government, is not property of any description, and consequently not subject to taxation: *Bank v. Hines, 3 O. S. 1*; *Baker v. Cincinnati, 11 O. S. 534.*

The limitations in § 3, of Art. XII, and this section, of the constitution prohibit double taxation of the property of banks, bankers and corporations: *Trust Co. v. Lander, 62 O. S. 266*, affirming *Trust Co. v. Lander, 19 O. C. D. 271, 10 O. C. D. 452*; *Creech v. Railway, 2 O. N. P. 164, 3 O. D. (N.P.) 265*; *Hynicka v. Insurance Co., 4 O. N. P. (N.S.) 297, 17 O. D. (N.P.) 80* [affirmed in *Insurance Co. v. Hynicka, 5 O. N. P. (N.S.) 255, 18 O. D. (N.P.) 11*].

The limitation in this section of the constitution, which prohibits double taxation of the property of corporations, applies only to taxation on property, and not to taxation of privileges or franchises. What is said in *Trust Co. v. Lander, 62 O. S. 266*, as to that limitation, is solely as to property taxation. That section of the constitution plainly shows that it applies to property taxation only, and has no reference to excise or franchise taxes: *Gum Co. v. Laylin, 66 O. S. 578.*

Cited and referred to: *Dodge v. Woolsey, 59 U. S. (18 How.) 331*; *Sanford v. Poe, 69 Fed. 546, 16 C. C. A. 305, 9 O. F. D. 50*; *Telegraph Co. v. Poe, 69 Fed. 557, 16 C. C. A. 683, 9 O. F. D. 63*; *Bank v. Miller, 19 Fed. 372, 5 O. F. D. 247.*

Organization of cities, etc.

SEC. 6. The general assembly shall provide for the organization of cities, and incorporated villages, by general laws, and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power.

The power vested in the general assembly under this section, to restrict the powers of taxation and assessment by municipal corporations, is subject to the limitations imposed by § 10, Art. I, of the constitution of the United States, which declares, that "no state shall pass any law impairing the obligations of contracts," and of § 28, Art. II, of the state constitution: *Goodale v. Fennell, 27 O. S. 426.*

The authority and duty to prevent an abuse of the powers of taxation and assessment by municipal corporations is intrusted by this section of the constitution to the general assembly, and not to the courts of the state. And the power of the legislature to authorize local taxation can not be judicially denied on the ground that the purpose for which it is exercised is not local, unless the absence of all special local interest is clearly apparent: *Walker v. Cincinnati, 21 O. S. 14.*

The power of levying local assessments is well settled in Ohio: *Cleveland v. Wick, 18 O. S. 303.*

The constitution so limits the power of assessments as to prevent its abuse: *Cincinnati v. Oliver, 31 O. S. 371.*

The general assembly is empowered by this section to restrict the use of assessments by cities and villages, so as to prevent the abuse of the power: *Alder v. Whitbeck, O. S. 539.*

The power to authorize assessments for the construction of free turnpike roads, and the opening of drains, as well as for the improvement of streets and sidewalks, exists to the same extent under the present constitution as under that of 1802: *Reeves v. Treasurer, 8 O. S. 333.*

The assessment, whether by the front foot or upon the value assessed for taxation, must be uniform, operating alike upon all the lots or lands abutting upon the improvement, and the fact that one or more of the tracts may not have been benefited by the improvement, will not render such assessment invalid: *Railroad v. Connolly, 10 O. S. 159.*

Assessments made on the principle of special benefits, without reference to frontage, are not unconstitutional: *Chamberlain v. Cleveland, 34 O. S. 551.*

The power to authorize assessments as distinguished from taxes proper, is comprehended in the general grant of legislative power to the general assembly. *Reeves v. Treasurer, 8 O. S. 333*; *Baker v. Cincinnati, 11 O. S. 534.*

CHAPTER EIGHT.

DEFINITIONS.

SECTION

- 1. Oath includes affirmation.
- 27. Interpretation of certain words.
- 5320. Meaning of word "person."
- 5321. "Personal tax."
- 5322. "Real property" and "land."
- 5323. "Investment in bonds."
- 5324. "Investment in stocks."

SECTION

- 5325. "Personal property."
- 5326. "Money" or "moneys."
- 5327. "Credits."
- 9367. Debts of insurance companies.
- 9675. Credits of building and loan companies.

Oath includes affirmation.

Sec. 1. The word "oath" includes affirmation. When an oath is required or authorized by law, an affirmation in lieu thereof may be taken by a person having conscientious scruples to taking an oath. An affirmation has the same force and effect as an oath. (R. S. Sec. 1.)

Statutory authority necessary to administer oath: Lessee of Harmon v. Stockwell, 9 O. 93.
Courts have inherent power to administer oaths: State v. Towney, 87 O. S. 21.
If the statute prescribes the form of the oath, an oath in compliance with such statutory form is sufficient: Lessee of Winder v. Starling, 7 O. (2nd. pt.) 190.
If oath required such fact must appear of record: Skinner v. Brown, 17 O. S. 33.
Return of tax collector, required by law to be under oath is insufficient if it does not on its face purport to be made under oath: Skinner v. Brown, 17 O. S. 33.
Such oath will be presumed, by force of statute, if necessary to validity of tax deed: Lessee of Winder v. Starling, 7 O. (2nd. pt.) 190.
Signature of affiant not necessary if officer certifies to fact of making oath: Gambrinus Stock Co. v. Weber, 41 O. S. 639.
Signature of officer to certificate that oath was taken is essential: Benedict v. Peters, 58 O. S. 527.

Interpretation of certain words.

Sec. 27. In the interpretation of parts first and second, unless the context shows that another sense was intended, the word "bond" includes an "undertaking", and the word "undertaking" includes a "bond"; "and" may be read "or", and "or" read "and", if the sense requires it; words of the present include a future tense, in the masculine, include the feminine and neuter genders, and in the plural include the singular and in the singular include the plural number; but this enumeration shall not be construed to require a strict construction of other words in such parts, or in this code. (R. S. Sec. 23.)

Meaning of word "person."

Sec. 5320. The word "person" as used in this title, includes firms, companies, associations and corporations; words in the singular number include the plural number, and words in the plural number include the singular number; and words in the masculine gender include the feminine and neuter genders. (R. S. Sec. 2730.)

Cited on the proposition that "person" includes corporations: Insurance Co. v. Hard, 59 O. S. 248.

"Personal tax."

Sec. 5321. The terms "personal tax" and "tax on personal property" as so used, include all taxes, excepting only the tax upon real estate specifically as such. (R. S. Sec. 2860.)

Cited: Butzman v. Whitbeck, 42 O. S. 223.

"Real property" and "land."

Sec. 5322. The terms "real property" and "land" as so used, include not only land itself, whether laid out in town lots or otherwise, withall things contained therein but also, unless otherwise specified, all buildings, structures, improvements, and fixtures of what-ever kind thereon, and all rights and privilege belonging, or appertaining thereto. (R. S. Sec. 2730.)

Cited: Lewis v. State, 69 O. S. 473; First National Bank v. Chapman, 173 U. S. 205, 12 O. F. D. 448; Telegraph Co. v. Poe, 51 Fed. 449, 8 O. F. D. 158.

An estate for years in real property which is renewable forever and is granted for a gross

sum, is real property within the meaning of the statutes upon the subject of taxation: *Cincinnati College v. Yeatman*, 30 O. S. 276.

If a perpetual lease has been granted, and the lessee has made improvements upon the land by reason whereof the taxes are increased, the lessee must pay such increased taxes, although there is no covenant in the lease whereby the lessee is bound to pay the taxes generally: *Joslyn v. Spellman*, 9 Dec. Rec. 258, 12 Bull. 7.

The term "land" includes whatever interest a lot owner may have from the curb line to the center of the street: *Railway v. Pouchot*, 4 O. C. C. 187, 2 O. C. D. 492.

If the fee in the soil is in one person and the right to the minerals thereof in another, such rights must be taxed separately: *Jones v. Wood*, 1 O. N. P. 155, 2 O. D. (N.P.) 75.

For the separate taxation of mineral rights in lands, see G. C. §§ 5560, 5562 and 5563.

"Investment in bonds."

SEC. 5323. The term "investment in bonds" as so used, includes all moneys in bonds, certificates of indebtedness, or other evidences of indebtedness of whatever kind, whether issued by incorporated or unincorporated companies, towns, cities, villages, townships, counties, states, or other incorporations, or by the United States, held by persons residing in this state, whether for themselves or others. (R. S. Sec. 2730.)

Cited: *Bank v. Chapman*, 173 U. S. 205, 12 O. F. D. 446; *Telegraph Co. v. Poe*, 61 Fed. 449, 8 O. F. D. 158.

The owner of bonds is not entitled to deduct his debts therefrom and to return only the excess for taxation; the term investment in bonds, as used in this section, being regarded as excluding bonds from the term "credits" as used in G. C. § 5327; *Payne v. Waterson*, 37 O. S. 121.

Bonds which are in possession of a resident executor are subject to taxation. *Tafel v. Lewis*, 75 O. S. 182.

"Investment in stocks."

SEC. 5324. The term "investment in stocks" as so used, includes all moneys invested in the capital or stock of a bank whether incorporated under the laws of this state or the United States, or an association, corporation, joint stock company, or other company, the capital or stock of which is or may be divided into shares, which are transferable by each owner without the consent of the other partners or stockholders, for the taxation of which no special provision is made by law, held by persons residing within this state, either for themselves or others. (R. S. Sec. 2730.)

Cited: *Bank v. Chapman*, 173 U. S. 205, 12 O. F. D. 446; *Telegraph Co. v. Poe*, 61 Fed. 449, 8 O. F. D. 158.

Shares in a national bank are included in the term "investment in stocks" under this section, and not within the term "credits" as used in G. C. § 5327; and hence the owner thereof cannot deduct debts owing by him from the amount of such stock and return only the excess: *Niles v. Shaw*, 50 O. S. 370.

Shares of stock which have been pledged as collateral with power of attorney authorizing the transfer thereof to the lender, if the loan is not paid, are taxable in the name of the former owner who has pledged the same: *Ratterman v. Ingalls*, 48 O. S. 468.

"Personal property."

SEC. 5325. The term "personal property" as so used, includes first, every tangible thing being the subject of ownership, whether animate or inanimate, other than money, and not forming part of a parcel of real property, as hereinbefore defined; second, the capital stock undivided profits, and all other means not forming part of the capital stock of every company, whether incorporated or unincorporated, and every share, portion, or interest in such stocks, profits, or means, by whatsoever name designated, inclusive of every share or portion, right, or interest either legal or equitable, in and to every ship, vessel, or boat, of whatsoever name or description, used or designed to be used either exclusively or partially in navigating any of the waters within or bordering on this state, whether such ship, vessel, or boat is within the jurisdiction of this state or elsewhere, and whether it has been enrolled, registered, or licensed at a collector's office, or within a collection district in this state, or not; third, money loaned on pledge or mortgage of real estate, although a deed or other instrument may have been given for it, if between the parties thereto it is considered as security merely. (R. S. Sec. 2730.)

Cited: *Bank v. Chapman*, 173 U. S. 205, 12 O. F. D. 446; *Telegraph Co. v. Poe*, 61 Fed. 449, 8 O. F. D. 158.

Municipal bonds which are deposited in this state by a foreign insurance company, under the statutes regulating the right of foreign insurance companies to do business in this state, are taxable as personal property: *Insurance Co. v. Bowland*, 196 U. S. 611, 14 O. F. D. 543.

The term "personal property" does not include contracts or the good will of a business; *Express Co. v. Poe*, 61 Fed. 470, 8 O. F. D. 181.

To entitle the auditor to construe as a mortgage a deed absolute with perpetual lease back containing a privilege of purchase at any time after a given date, the relation of debtor and creditor must be shown to have existed or been created between the parties at the time of the transaction, so that the land was considered by them as security merely, not for the rent alone, but to secure the return of the purchase money: *Kraay v. Gibson*, 2 O. N. P. (N.S.) 537, 15 O. D. (N.P.) 323.

Such a transaction will not be construed to be a mortgage and taxable as such unless it was predicated upon a loan with the obligation upon the borrower to repay it: *Kraay v. Gibson*, 2 O. N. P. (N.S.) 537, 15 O. D. (N.P.) 323.

For discussion of question whether a transaction is a sale with option of repurchase or a loan see A. G. R. 1912, p. 636.

"Money" or "moneys."

SEC. 5326. The term "money" or "moneys," as so used, includes any surplus or undivided profits held by societies for savings or banks having no capital stock, gold and silver coin, bank notes of solvent banks, in actual possession, and every deposit which the person owning, holding in trust, or having the beneficial interest therein, is entitled to withdraw in money on demand. (R. S. Sec. 2730.)

Cited: *Bank v. Chapman*, 173 U. S. 205, 12 O. F. D. 446; *Telegraph Co. v. Poe*, 61 Fed. 470, 8 O. F. D. 158.

Whatever amounts to money when owned by an individual is to be treated as money when owned by a bank: *Patton v. Bank*, 7 O. N. P. 401, 10 O. D. (N. P.) 321.

Money as defined in G. C. Sec. 5326, when on deposit and subject to legal demand is taxable, whether held by one in his own right or in a representative capacity, and outstanding checks which have not been certified can not be deducted from the balance in the bank in determining the amount to be returned for taxation. *Insurance Co. v. Hynicka*, 5 O. N. P. (N. S.) 255, 18 O. D. (N. P.) 1. Affirmed without opinion, 78 O. St. 432.

Deposits in savings banks must be listed for taxation by the owners thereof: *Collett v. Savings Society*, 13 O. C. C. 131; 7 O. C. D. 146. Affirmed without opinion, 56 O. St. 776.

Debts cannot be deducted from money in bank subject to be checked out, although the liabilities of the owner are largely in excess of his deposit in bank: *Stewart v. Duerr*, 20 O. C. C. 505; 11 O. C. D. 311.

When a savings bank has a rule as follows: "Depositors may be required to give sixty days' notice before withdrawing their deposits, but as a general rule they will be permitted to withdraw at pleasure;" held: that evidence of long usage and custom established that such rule is intended as a reservation of a right to pass a rule suspending payment for sixty days, rather than as a rule itself, and that as a matter of fact such deposits are and always have been "withdrawable on demand," will justify the listing of such deposits by a person owning the same, or holding them in trust, or having a beneficial interest in them as moneys under section 5326, General Code, A. G. R. 1912, p. 605.

"Credits."

SEC. 5327. The term "credits" as so used, means the excess of the sum of all legal claims and demands, whether for money or other valuable thing, or for labor or service due or to become due to the person liable to pay taxes thereon, including deposits in banks or with persons in or out of the state, other than such as are held to be money, as hereinbefore defined, when added together, estimating every such claim or demand at its true value in money, over and above the sum of legal bona fide debts owing by such person. In making up the sum of such debts owing, there shall not be taken into account an obligation to a mutual insurance company, nor an unpaid subscription to the capital stock of a joint stock company, nor a subscription for a religious, scientific, literary, or charitable purpose; nor an acknowledgment of indebtedness, unless founded on some consideration actually received, and believed at the time of making such acknowledgment to be a full consideration therefor; nor an acknowledgment made for the purpose of diminishing the amount of credits to be listed for taxation; nor a greater amount or portion of a liability as surety, than the person required to make the statement of such credits believes that such surety is in equity bound, and will be compelled to pay, or to contribute, in case there are no securities. Pensions receivable from the United States shall not be held to be credits; and no person shall be required to take into account in making up the amount of credits, a greater portion of any credits than he believes will be received or can be collected, or a greater portion of an obligation given to secure the payment of rent than the amount that has accrued on any lease and remains unpaid. (R. S. Sec. 2730.)

Cited: *Bank v. Chapman*, 173 U. S. 205, 12 O. F. D. 446; *Telegraph Co. v. Poe*, 61 Fed. 449, 8 O. F. D. 158; *Brinkerhoff v. Brumfield*, 94 Fed. 422, 10 O. F. D. 88; *Bank v. Hubbard*, 105 Fed. 809, 45 C. C. A. 66, 13 O. F. D. 508.

The term "credits" means the balance after deducting debts from the gross amount of choses in action: *Treasurer v. Bank*, 47 O. S. 503.

If land has been sold, the amount due as purchase money is taxable as a credit, although the vendor still retains the legal title: *Rheinboldt v. Raine*, 52 O. S. 160 [affirming *Rheinboldt v. Raine*, 6 O. C. C. 544, 3 O. C. D. 577].

A foreign corporation which does business in Ohio may, in listing its credits, deduct from the debts due to it in Ohio such of its bona fide debts as arise from the same source: *Hubbard v. Brush*, 61 O. S. 252.

The owner of bonds is not entitled to deduct his debts from his investment in bonds and to return only the excess for taxation: *Payne v. Watterson*, 37 O. S. 121.

Money which is loaned on mortgage security is a credit, and if the lender is a resident of another state such credit is not subject to taxation in Ohio: *Meyers v. Seaberger*, 45 O. S. 232.

Outstanding checks cannot be deducted from deposits in banks: *Insurance Co. v. Hynicka*, 5 O. N. P. (N. S.) 255, 18 O. D. (N. P.) 1 [affirming *Hynicka v. Insurance Co.*, 4 O. N. P. (N. S.) 297, 17 O. D. (N. P.) 801. Affirmed without opinion, 78 O. S. 432.]

A judgment is a credit and must be listed for taxation at its actual value, although proceedings in error are pending to reverse it: *Cameron v. Cappeller*, 41 O. S. 533.

A judgment should be listed at its true value in money and not at its nominal value: *Sherard v. Lindsay*, 13 O. C. C. 315, 7 O. C. D. 245.

In the administration of our tax laws the holder of national bank shares has no right under the statutes, state and national, to deduct his legal bona fide debts from the value of

such shares, but he is legally bound to pay tax upon the assessed value of such shares without deduction on account of such debts: *Chapman v. Bank*, 56 O. S. 310; affirmed in *Bank v. Chapman*, 173 U. S. 205, 12 O. F. D. 446 [overruling *Whitbeck v. Bank*, 127 U. S. 193, 6 O. F. D. 63]; see, to the same effect, *Lander v. Bank*, 186 U. S. 458, 14 O. F. D. 497 [reversing *Bank v. Lander*, 109 Fed. 21, and affirming *Bank v. Hubbard*, 98 Fed. 465].

A credit is defined in short to be what is owing to a person, over and above his legal *bona fide* debts, but in making up what is owing to him he cannot include moneys, stocks, nor deposits subject to withdrawal on demand: *Chapman v. Bank*, 56 O. St. 320.

The definition of credits contained in the statute, applies equally to all persons and corporations, foreign or domestic. So that when a duty is enjoined upon either to list for taxation its "credits", the term "credit" implies the balance remaining after all *bona fide* debts are deducted from its legal claims and demands: *Hubbard v. Brush*, 61 O. St. 255.

A taxpayer cannot deduct as legal *bona fide* debts an obligation to a mutual insurance company, nor an unpaid subscription to the capital stock of a joint stock company, nor to any religious, scientific, literary, or charitable purpose, nor any acknowledgment made for the purpose of diminishing the amount of credits to be listed for taxation, nor any greater amount as surety than he is likely to be compelled to pay, nor any indebtedness created in the purchase of non-taxable securities: *Chapman v. Bank*, 56 O. St. 321.

The interest of the beneficiary under an insurance policy after the death of the insured and under an option to leave the proceeds of the policy with the company during the life of the beneficiary, and to withdraw the whole or any part thereof at any time or at specified periods, the principal sum to bear interest at a stipulated rate or at not less than a stipulated rate, and the balance, if any, remaining at the death of the beneficiary to be paid to his personal representatives, constitutes a credit and is taxable as such to the beneficiary. A. G. R. 1915, p. 202.

Inasmuch as a tax operates in invitum and is not an obligation created by the voluntary act of the obligor, arising out of contract by him entered into, it may be considered a debt so as to be deductible from credits, under section 5327, General Code. A. G. R. 1913, p. 1235.

Debts of insurance companies.

SEC. 9357. This section defines the reserve of life insurance companies organized under the laws of Ohio as "being the amount of debts of life insurance companies by reason of their outstanding policies in gross," and provides that such reserves "may be so treated in the returns for taxation made" by such companies.

Credits of building and loan companies.

SEC. 9675. This section provides that shares of stock in building and loan associations, "upon which no loans have been made or money advanced by the company shall be considered and held as credits."

CHAPTER NINE.

PROPERTY SUBJECT TO TAXATION.

SECTION	TAXABLE PROPERTY.	SECTION	
5328.	Property subject to taxation.	5354.	Armory buildings, etc.
5329.	When public lands become taxable.	5355.	Fire engines, etc.
5330.	Lands held by religious society, etc., under lease of more than fifteen years subject to taxation.	5356.	Market houses and halls.
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		5359.	Monuments and funds therefor.
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	EXEMPT PROPERTY.	5362.	Lands held by memorial association.
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10101.	Burial lots.	5365-1.	Funds exempt from taxation.
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5351.	State or U. S. property.	192.	Shares of stock in certain corporations.
5352.	Courthouses, jails, etc.	5372.	Shares of capital stock.
5353.	Lands, etc., to support poor.		
5353-1.	Children's home.		

TAXABLE PROPERTY.

Property subject to taxation.

SEC. 5328. All real or personal property in this state, belonging to individuals or corporations, and all moneys, credits, investments in bonds, stocks, or otherwise, of persons residing in this state, shall be subject to taxation, except only such property as may be expressly exempted therefrom. Such property, moneys, credits, and investments shall be entered on the list of taxable property as prescribed in this title. (R. S. Sec. 2731.)

This section makes all property which is referred to in G. C. §§ 5321 to 5327 subject to taxation, whether it belongs to a natural person or to a corporation, if such property is not otherwise made exempt from taxation: *Telegraph Co. v. Poe*, 61 Fed. 449, 8 O. F. D. 158.

A loan which is secured by a conveyance in fee with a lease back and the privilege of redemption is in legal effect a mortgage and is taxable as such: *Patrick v. Littell*, 36 O. S. 79.

Money lent by a nonresident creditor, secured by a mortgage upon Ohio realty cannot be taxed in Ohio: *Meyers v. Seaberger*, 45 O. S. 232.

That debts which belong to a nonresident creditor and which are secured by a mortgage on Ohio property, cannot be taxed in Ohio unless the possession of such securities has been surrendered to an agent residing in Ohio, see *Jack v. Walker*, 96 Fed. 578, 10 O. F. D. 1, 88 Fed. 576, 31 C. C. A. 462, 10 O. F. D. 359; *Jack v. Walker*, 79 Fed. 138, 10 O. F. D. 139.

Bonds coming in this state into the possession of a resident executor who derives his authority under the will by appointment of the probate court of the county of his residence, are taxable in this state, notwithstanding that the will was executed and probated in a foreign country, and the testator was at the time of his decease a nonresident of the state, and all beneficiaries are likewise nonresidents: *Tafel v. Lewis*, 75 O. S. 182; see *Tafel v. Lewis*, 1 *Hosea*, 455.

The fact that the property of a foreign corporation is taxed in another state does not render shares of stock in such corporation exempt from taxation in Ohio: *Bradley v. Bauder*, 36 O. S. 28.

Shares of stock in a foreign corporation and shares of stock in a corporation which has been formed by the consolidation of an Ohio corporation and corporations of other states, such corporations owning property in Ohio and paying taxes here upon the proportion of their property situated in Ohio, are subject to taxation in Ohio, if owned by a resident of this state: *Lee v. Sturges*; *Insurance Co. v. Ratterman*, 46 O. S. 153; *Sturges v. Carter*, 114 U. S. (Supreme Court) 511, 5 O. F. D. 428.

See G. C. § 192 for the present statute with reference to the taxation of shares of a corporation.

The capital of a corporation, consisting wholly of patent rights issued by the government of the United States, is, by federal authority, exempt from taxation under the taxing power of the state; but shares of the capital stock of such corporation are not exempted by such federal authority, and are subject to the taxing power of the state: *Scott v. Smith*, 2 O. N. P. (N. S.) 617, 15 O. D. (N. P.) 590.

Personal property in the possession of an assignee for the benefit of creditors of a manufacturing corporation, which is not being reduced to money for distribution among the creditors of the corporation, but is being held and operated, under the orders of the

insolvency court, and at the joint request of the creditors of the assignee, in the conduct of a going business, such business being conducted as it had been theretofore by the corporation itself, is subject to taxation, and it is the duty of the assignee to list such property for taxation: *French v. Bohe*, 64 O. S. 323.

Personal property, whether in the form of moneys, bills receivable, bonds, certificates of stock, or otherwise, held by an assignee of an insolvent debtor whose estate is being settled in the probate court, is not subject to taxation, and it is not the duty of such assignee to make return of the assets of such estate to the county auditor for taxation: *McNeill v. Hagerly*, 51 O. S. 255 [reversing *Hagerly v. McNeill*, 7 O. C. C. 383, 4 O. C. D. 647].

As to whether property in the hands of an assignee is at present taxable see provisions of Section 5372-1, G. C. 106 Ohio L., page 247.

When public lands become taxable.

SEC. 5329. All tracts of land set apart for school or ministerial purposes, and sold by and under authority of law, and all lands which are hereafter sold by the United States, shall be subject to taxation as other lands in this state immediately after such sale. School or ministerial lands shall not be sold for taxes until the purchase money therefor is fully paid, but shall be returned as delinquent, and continue on the duplicate, with the taxes of each year charged thereon, and added to the tax and penalty due when they became delinquent, until payment is made, by the purchaser or his assigns, of such purchase money, with the tax and penalty, or the lands are resold by the county auditor, pursuant to the laws provided for the sale of such lands. (R. S. Sec. 2731.)

As soon as school lands have been sold they may be subject to taxation, and Art. VI, § 1, of the Ohio constitution, does not forbid such taxation: *State, ex rel., v. Purcel*, 31 O. S. 352.

School lands and ministerial lands cannot be subjected to taxation before they are sold: *Martindill v. Sanger*, 8 O. N. P. 549, 11 O. D. (N.P.) 727.

School lands and ministerial lands cannot be sold for the nonpayment of taxes, until the purchase price therefor has been paid in full: *Martindill v. Sanger*, 8 O. N. P. 549, 11 O. D. (N.P.) 727.

Lands held by religious society, etc., under lease of more than fifteen years subject to taxation.

SEC. 5330. All lands held under lease for a term exceeding fifteen years, and not subject to re-valuation, belonging to the state, a municipal corporation, religious, scientific or benevolent society or institution, whether incorporated or unincorporated, or to trustees for free education only, and school and ministerial lands, shall be considered for all purposes of taxation as the property of the person or persons holding them, and shall be assessed in their names. (R. S. Sec. 2733.)

This section applies to a perpetual lease of school lands which are owned by the state, and which is devoted to school purposes for each township under an arrangement entered into between the United States and Ohio: *Bentley v. Barton*, 41 O. S. 410.

Lands which are owned by municipal corporations and which are leased for more than the period provided by this section, and which are not subject to revaluation, are, under the provisions of this section, taxable only to the extent of the interest of the lessee therein: *Zumstein v. Mining Co.*, 54 O. S. 264; see, to the same effect, *Ludlow v. Brewster*, 3 O. C. C. 82, 2 O. C. D. 47 [affirmed, without report, *Ludlow v. Brewster*, 27 Bull. 75].

Leasehold property for a term exceeding that fixed by this section and not subject to revaluation, is to be taxed as the property of the lessee: *Cincinnati College v. Yeatman*, 30 O. S. 276.

A lessee under a perpetual lease, which contains no covenant to the effect that such lessee will pay the taxes, is nevertheless liable for the increase in taxes due to improvements placed by him upon such realty: *Joslyn v. Spellman*, 9 Dec. Rep. 258, 12 Bull. 7.

EXEMPT PROPERTY.

School houses, churches, colleges, etc.

SEC. 5349. Public school houses and houses used exclusively for public worship, the books and furniture therein and the ground attached to such buildings necessary for the proper occupancy, use and enjoyment thereof and not leased or otherwise used with a view to profit, public colleges and academies and all buildings connected therewith, and all lands connected with public institutions of learning, not used with a view to profit, shall be exempt from taxation. This section shall not extend to leasehold estates or real property held under the authority of a college or university of learning in this state, but leaseholds, or other estates or property, real or personal, the rents, issues, profits and income of which is given to a city, village, school district, or subdistrict in this state, exclusively for the use, endowment or support of schools for the free education of youth without charge, shall be exempt from taxation as long as such property, or the rents, issues, profits or income thereof is used and exclusively applied for the support of free education by such city, village, district or subdistrict. (R. S. Sec. 2732.)

With reference to exemptions claimed by individuals and corporations for profit, the rule is that the right to exemption under the law should be reasonably clear, the presumption being that all property is subject to taxation by a uniform rule, to the end that all property bear its true share of the burden of government. While the court does not apply strict rules of construction in cases where religious, charitable and educational institutions seek exemp-

tions, we think that such right to exemption should appear in the language of the constitution or statute, with reasonable certainty, and not depend on their doubtful construction: *Watterson v. Halliday*, 77 O. S. 150.

The sole power to exempt any ground from taxation is vested in the general assembly. There is no implied exemption, but it must be expressed in clear and unmistakable terms: *Cincinnati v. Hynicka*, 9 O. N. P. (N.S.) 273, 20 O. D. (N.P.) 365.

If an exception or exemption from taxation is claimed, the intention of the general assembly to provide for the exemption must be expressed in clear and unambiguous terms. It must be shown indubitably to exist. At the outset every presumption is against it. Intent to confer immunity from taxation must be clear, beyond reasonable doubt, for nothing can be taken against the state by presumption or inference: *Cincinnati College v. State*, 19 O. 110; *Lima v. Cemetery Association*, 42 O. S. 128; *Insurance Co. v. Ratterman*, 46 O. S. 153; *Scott v. Smith*, 2 O. N. P. (N.S.) 617, 15 O. D. (N.P.) 590.

The fact that officers who are charged with the duty of enforcing tax laws have construed a statute as operating an exemption, does not bind the state nor the successors of such officers: *Lee v. Sturges*, 46 O. S. 153; *Insurance Co. v. Ratterman*, 46 O. S. 153.

Land owned by a college and used for a pumping station, from which water is furnished to the college community and is also sold to outsiders at a profit, is taxable so long as the practice of vending water to persons not connected with the college is continued: *Kenyon College v. Schnebly*, 12 O. C. C. (N.S.) 1, 21 O. C. D. 150 [reversing in part, *Kenyon College v. Schnebly*, 8 O. N. P. (N.S.) 160, 19 O. D. (N.P.) 432; affirmed, without report, *Schnebly v. Kenyon College*, 81 O. S. 514].

The exemption from taxation of property belonging to colleges and academies, provided by this section extends to all buildings and lands that are with reasonable certainty used in furthering or carrying out the necessary objects and purposes of the institution: *Kenyon College v. Schnebly*, 12 O. C. C. (N.S.) 1, 21 O. C. D. 150 [reversing in part, *Kenyon College v. Schnebly*, 8 O. N. P. (N.S.) 160, 19 O. D. (N.P.) 432; affirmed, without report, *Schnebly v. Kenyon College*, 81 O. S. 514].

Under this section, residences occupied by the president and professors and janitor of a college are exempt, as also is vacant land from which no revenue is derived; but land used for agricultural purposes or pasturage is not exempt: *Kenyon College v. Schnebly*, 12 O. C. C. (N.S.) 1, 21 O. C. D. 150 [reversing in part, *Kenyon College v. Schnebly*, 8 O. N. P. (N.S.) 160, 19 O. D. (N.P.) 432; affirmed, without report, *Schnebly v. Kenyon College*, 81 O. S. 514].

Property leased to parties under an agreement requiring that they conduct therein a grammar school, which is treated as a preparatory department of the college, is not taxable while so used, but becomes taxable upon the burning of the buildings and the abandonment of the site for grammar school purposes: *Kenyon College v. Schnebly*, 8 O. N. P. (N.S.) 160, 19 O. D. (N.P.) 432. [Not affected by reversal in *Kenyon College v. Schnebly*, 12 O. C. C. (N.S.) 1, 21 O. C. D. 150 [affirmed, without report, *Schnebly v. Kenyon College*, 81 O. S. 514].

Under this section, houses which are used exclusively for public worship, together with the grounds which are necessary for such occupancy and use, are exempt from taxation, although they are held by a ninety-nine year lease, renewable forever: *Church of the Epiphany v. Raine*, 10 Dec. Rep. 449, 21 Bull. 180.

In order to be exempt, as being used for public worship, the enjoyment must be open to the public. Accordingly a parsonage is not exempt from taxation: *Gerke v. Purcell*, 25 O. S. 229.

A camp meeting association which makes certain charges for privileges and concessions granted to persons who attend, but makes such charges for the purpose of defraying expenses and not for profit, is not, by making such charges, deprived of its right to hold exempt from taxation its property which is used for camp meeting purposes: *Davis v. Camp Meeting Association*, 57 O. S. 257.

The rule that statutes exempting property from taxation should be strictly construed does not permit the exemption of a vacant lot, owned by a charitable organization and upon which it is proposed to erect a building to be used for charitable purposes, notwithstanding the funds wherewith the lot was purchased were exempt, and the lot, as well as the building, will be exempt as soon as a building has been erected: *Christian Association v. Spencer*, 9 O. C. C. (N.S.) 351, 19 O. C. D. 249. (In this case the lot was owned by the Young Women's Christian Association.)

If property which is exempt by this section is wrongfully subjected to taxation, such error may be corrected under G. C. §§ 2588 to 2590: *Butler v. Commissioners*, 39 O. S. 168.

Houses used exclusively as places of domicile for the sisters or lay teachers of parochial schools, are "buildings connected with public colleges and academies" or "lands connected with public institutions of learning," within the meaning of section 5349, G. C., and are therefore exempted from taxation. A. G. R. 1911-1912, p. 1154.

School property exempt from taxation.

SEC. 4759. Real or personal property vested in any board of education shall be exempt from taxation and from sale on execution or other writ or order in the nature of an execution. (R. S. Sec. 3973.)

May acquire land and property.

SEC. 10093. A company or association incorporated for cemetery purposes may appropriate or otherwise acquire and hold, not exceeding one hundred acres of land; also,

take any gift or devise in trust for cemetery purposes, or the income from such gift or devise according to the provisions of such gift or devise, in trust, all of which shall be exempt from execution, from taxation, and from being appropriated to any other public purpose, if used exclusively for burial purposes, and in no wise with a view to profit. (R. S. Sec. 3571.)

An incorporated cemetery association is not relieved from an assessment for a street improvement by a statutory provision exempting its lands from taxation, such exemption being regarded as confined to taxes as distinguished from local assessments: *Lima v. Cemetery Association*, 42 O. S. 128.

While the lands of an incorporated cemetery association, so far as exempted, can not be sold to pay an assessment for the improvement of a street, the municipal corporation may enforce the assessment by such remedies as the statute and courts of equity afford: *Lima v. Cemetery Association*, 42 O. S. 128.

Burial lots.

SEC. 10101. Burial-lots sold by such company or association shall be for the sole purpose of interments, be subject to the rules prescribed by the company, or association, and be exempt from taxation, execution, attachment, or any other claim, lien, or process whatever, if used exclusively for burial purposes, and in no wise with a view to profit. (R. S. Sec. 3575.)

Companies for protecting and preserving dead bodies.

SEC. 10192. Any association organized for the purpose of preserving and protecting bodies of deceased persons before burial may purchase, or take by devise or gift, hold, and convey real estate, not exceeding one acre of land, and erect thereon suitable buildings, construct and maintain vaults, and such other appliances as are necessary to carry out its objects. Such property shall be exempt from execution, from taxation, and from being appropriated to any other public purpose, if used exclusively for the purpose herein described. (R. S. Sec. 3884.)

Burial grounds.

SEC. 10105. Lands appropriated and set apart as burial grounds, either for public or private use, and so recorded or filed in the recorder's office of the county where they are situated, or any burial ground that has been used as such for fifteen years, shall not be subject to sale on execution on a judgment, to taxation, to dower, nor to compulsory partition. But land so appropriated and set apart as a private burial ground shall not be so exempt if it exceeds in value the sum of fifty dollars. (R. S. Sec. 3578.)

Graveyards.

SEC. 5350. Lands used exclusively as graveyards, or grounds for burying the dead, except such as are held by a person, company or corporation with a view to profit, or for the purpose of speculating in the sale thereof, shall be exempt from taxation. (R. S. Sec. 2732.)

Land which has been bought for a cemetery, but is not prepared for use as such until after the day preceding the second Monday in April, is not exempt from taxation for that year, because of such intended use: *Cemetery v. Brooks*, 8 O. C. C. 439, 4 O. C. D. 478.

This question was not discussed by the supreme court in *Watterson v. Halliday*, 77 O. S. 150.

The exemption as to cemeteries continues after abandonment for burial purposes until all the bodies have been removed; *Watterson v. Halliday*, 2 O. N. P. (N. S.) 693, 15 O. D. (N. P.) 271.

Exemption from taxation does not include exemption from assessment for a local improvement: *Lima v. Cemetery Association*, 42 O. S. 128.

An association is not exempt from taxation upon lands which it holds and which are not being used with a view to profit, but which have never been laid out and allotted or otherwise prepared for use as a burial ground.

A building for the residence of the cemetery superintendent, constructed by the association upon the lands set apart and actually used for burial purposes and otherwise conceded to be exempt, is itself exempt from taxation. *A. G. R.* 1914, page 1435.

State or U. S. property.

SEC. 5351. Real or personal property belonging exclusively to the state or United States shall be exempt from taxation. (R. S. Sec. 2732.)

See, also, for exemption of United States property, appendix, §§ 13793, 13801, 13805, 13810, 13819, 13823, 13825, 13827, 13831, 13834, 13840, 13842, 13844, 13846 and 13847.

For mode of assessing state realty, see 82 v. 122.

Courthouses, jails, etc.

SEC. 5352. Buildings belonging to counties and used for holding courts, and for jails or county offices, with the ground, not exceeding ten acres in any county, on which such buildings are erected, shall be exempt from taxation. (R. S. Sec. 2732.)

Lands, etc., for support of poor exempt.

SEC. 5353. Lands, houses and other buildings belonging to a county, township, city or village, used exclusively for the accommodation or support of the poor, or leased to the state or any political subdivision thereof for public purposes, and property belonging to institutions of public charity only, shall be exempt from taxation. (R. S. Sec. 2732.) 103 v. 548.

This section is within the authority which is conferred upon the general assembly by Art. XII, § 2, of the constitution. It exempts from taxation an endowment fund of a college which belongs exclusively to it, and which is devoted solely to deriving an income for its support: *Little v. Seminary*, 72 O. S. 417 [affirming *Seminary v. Little*, 2 O. C. C. (N.S.) 540, 15 O. C. D. 609]. See also *Meyers v. The Benjamin Rose Institute*, 92 O. St. 000.

Residences of bishops, priests and sextons are not exempt from taxation, under this section, although they are used in part for religious and charitable purposes: *Watterson v. Halliday*, 77 O. S. 150 [reversing *Watterson v. Halliday*, 2 O. N. P. (N.S.) 693, 15 O. D. (N.P.) 271].

A library association which is formed for the purpose of "the diffusion of useful knowledge," which is open to all persons upon equal terms without any distinction and whose income and revenues are devoted to such purposes and objects is an "institution of public charity only" and as such is exempt from taxation within the meaning of this section: *Library Association v. Pelton*, 36 O. S. 253.

An association which extends relief only to its own sick and needy is not a public charity, within the meaning of this section, and is not exempt: *Morning Star Lodge v. Hayslip*, 23 O. S. 144.

Property used for support of children's home exempt.

SEC. 5353-1. Property, real, personal, and mixed, the net income of which is used solely for the support of institutions used exclusively for children's homes for poor children, the real estate on which said institutions are located, and the buildings connected therewith, shall be exempt from taxation. (106 v. 179.)

Armory buildings, etc.

SEC. 5354. Buildings belonging to and used exclusively for armory purposes by lawfully organized military organizations which are fully armed and equipped at their own expense and lawfully made subject to all calls of the governor for troops in case of war, riot, insurrection or invasion, and the land owned and used as sites for the armory buildings of such military organizations, not leased or otherwise used with a view to profit, and moneys and credits appropriated solely to sustain, and belonging exclusively to, such organizations, shall be exempt from taxation. (R. S. Sec. 2732.)

Fire engines, etc.

SEC. 5355. Fire engines, property and other implements used for the extinguishment of fires, with the buildings used exclusively for the safe keeping thereof, and for the meeting of fire companies, whether belonging to a township, city or village, or to a fire company organized therein, shall be exempt from taxation. (R. S. Sec. 2732.)

Market houses and halls.

SEC. 5356. Market houses, public squares or other public grounds of a city, village or township, houses or halls used exclusively for public purposes or erected by taxation for such purposes, notwithstanding that parts thereof may be lawfully leased, shall be exempt from taxation. (R. S. Sec. 2732.)

Public ground used "for public purposes" is exempt from taxation: *Cincinnati v. Hynicka*, 9 O. N. P. (N.S.) 273, 20 O. D. (N.P.) 365. Affirmed without opinion, 84 O. St. 446.

Public ground upon which is erected a warehouse operated by a railroad company is not used "for public purposes" within the meaning of the statute exempting public grounds from taxation: *Cincinnati v. Hynicka*, 9 O. N. P. (N.S.) 273, 20 O. D. (N.P.) 365.

Public lands of a city when not needed for public purposes may be leased by the city for private purposes; during such diversion from public use such grounds are taxable: *Cincinnati v. Hynicka*, 9 O. N. P. (N.S.) 273, 20 O. D. (N.P.) 365.

The use by a coal company of river wharf ground which belongs to a city, for handling coal is not for an exclusive public purpose within the meaning of the statute exempting from taxation public grounds used "for public purposes": *Cincinnati v. Hynicka*, 9 O. N. P. (N.S.) 273, 20 O. D. (N.P.) 365.

The property of a municipal corporation which is not used for public or governmental purposes, is not exempt from taxation, and accordingly if such land is leased for private purposes, it is not exempt from taxation, although the income thereof may be applied to a public purpose: *Cincinnati v. Lewis*, 66 O. S. 49.

The public property which is exempt from taxation by the laws of Ohio does not include all municipally owned property, but only such public property as is employed in the exercise of some governmental function: *Railway v. Roth*, 13 O. N. P. (N.S.) 633.

Water works, etc.

SEC. 5357. Works, machinery, pipe-lines and fixtures belonging to a city or village and used exclusively for conveying water to it, or for heating or lighting it, shall be exempt from taxation (R. S. Sec. 2732.)

Gas wells, pipe lines, pumping stations and machinery owned by a municipal corporation and used by it for the conveyance of gas to be consumed by it and by its citizens generally, are used exclusively for a public purpose and are exempt from taxation: Toledo v. Hosler, 54 O. S. 418.

In State, ex rel., v. Toledo, 48 O. S. 112, the supplying of natural gas to a municipal corporation and its citizens was held to be a public use for which the taxing power might be exercised.

Stocks.

SEC. 5358. Stocks, or certificates of stock, in a corporation or railroad company, owned by a county, township, city or village, the money to acquire which was originally raised by taxation upon such county, township, city or village, shall be exempt from taxation. (R. S. Sec. 2732.)

Since the statutes of the state do not make provision for the exemption of municipal bonds purchased by sinking fund trustees, the same must be held to be taxable in this state. A. G. R. 1913, p. 1507.

Monuments and funds therefor.

SEC. 5359. Funds raised and set apart for the purpose of building monuments to the soldiers of this state, and monument and monumental buildings, shall be exempt from taxation. (R. S. Sec. 2732.)

See G. C. § 5362.

For similar statute, § 14828.

Certain sum.

SEC. 5360. A resident of this state may deduct a sum, not exceeding one hundred dollars, to be exempt from taxation, from the aggregate listed value of his taxable personal property of any kind, except dogs, of which he is the actual owner. (R. S. Sec. 2732.)

The term "individual" as used in article XII, section 3, of the constitution, compels the construction that section 5360, General Code, exempting from taxation the first one hundred dollars of personal property, applies only to natural persons and not to corporations.

Parties owning property in common, are each entitled to a deduction of one hundred dollars from the values of their respective interests.

Trustees, guardians, testamentary trustees, etc., who actually act as legal representatives of others for the purpose of paying their taxes, may deduct in their behalf the one hundred dollars exemption. Executors and administrators represent estates of deceased persons, however, and may not deduct the exemption in behalf of the estate or of separate heirs or legatees. A. G. R. 1911-1912, p. 656.

A trustee of an "estate" designated by will, may not deduct \$100 as exemption in personal property returns, nor may the trustees of a secret society. A guardian for minor heirs, however, may deduct such exemptions in returning the property of his ward or wards. A. G. R. 1911-1912, p. 203.

Certain lands used as site for monument.

SEC. 5361. Lands held and used as the place of interment of a distinguished deceased person and as the place of a monument or memorial to such person, as provided for by the statutes of this state, together with funds or moneys raised or held for the purpose of maintaining or caring for such monument or memorial, and its place of erection, so long as they are held and used for such purpose, shall be exempt from taxation or assessment for any purpose. (R. S. Sec. 2732a.)

Lands held by memorial association.

SEC. 5362. Real estate held or occupied by an association or corporation, organized or incorporated under the laws of this state, relative to soldiers memorial associations, monumental building associations, or cemetery associations or corporations, which in the opinion of the trustees, directors or managers thereof, is necessary and proper to carry out the object intended for such association or corporation, shall be exempt from taxation. (83 v. 3 § 2.)

For care of the memorial at Fort Meigs, § 15292, et seq.

For power to purchase memorial lands, § 15290.

Prehistoric earthworks or historic buildings.

SEC. 5363. Lands in this state on which are situated prehistoric earthworks, or upon which was erected and still stands an historic building which is preserved in commemoration of historic events in the settlement and development of the state, and which are purchased by any person, association or company for the purpose of the preservation of such earthworks or historic building and are not held for profit but dedicated to public uses as prehistoric parks or as historic grounds, shall be exempt from taxation. The

owners of such prehistoric parks or historic grounds may establish reasonable rules governing access thereto. (97 v. 49 §§ 1, 2.)

For provision for the purchase of Fort Ancient, see § 15302, et seq.
For chapter on public lands, see § 13856.

Property of certain societies.

SEC. 5364. Real or personal property belonging to an incorporated post of the grand army of the republic, union veterans union, grand lodge of free and accepted masons, grand lodge of the independent order of odd fellows, grand lodge of the Knights of Pythias, association for the exclusive benefit, use and care of aged, infirm and dependent women, a religious or secret benevolent organization maintaining a lodge system, an incorporated association of ministers of any church, or incorporated association of commercial traveling men, an association which is intended to create a fund or is used or intended to be used for the care and maintenance of indigent soldiers of the late war, indigent members of said organizations, and the widows, orphans and beneficiaries of the deceased members of such organizations, and not operated with a view to profit or having as their principal object the issuance of insurance certificates of membership, and the interest or income derived therefrom, shall not be taxable, and the trustees of any such organizations shall not be required to return or list such property for taxation. (R. S. Sec. 2732-3.)

"Dunkers."

SEC. 5365. Moneys, funds or credits belonging to the representative body of Indiana meeting of friends or the religious society known as the German Baptists or Dunkers, in this state, which moneys, funds or credits or the income therefrom are exclusively used for the support of the poor of such denomination, society or congregation, shall be exempt from taxation. The person or persons having the care and supervision of such moneys, funds or credits, shall not be required to return or list them for taxation. (89 v. 383, Sec. 1.)

Funds exempt from taxation.

SEC. 5365-1. § 30. Every fraternal benefit society organized or licensed under this act is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal and school tax, other than taxes on real estate and office equipment. (103 O. L., 533, Sec. 30.)

The amendment of Section 2, Article XII, of the Constitution, adopted in 1912, which changes the language of said section from "institutions of purely public charity" * * * may by general laws, be exempted from taxation", to "institutions used exclusively for charitable purposes, * * * may by general laws, be exempted from taxation," is not self-executing. Therefore, inasmuch as sections 5364 5365 and 5365-1 G. C., were enacted prior to said amendment, any additional power vested in the legislature by said amendment has no application to said statutes and they can only be sustained insofar as within the power conferred upon the legislature by the constitution at the time of their enactment; i. e., said amendment of 1912 did not have the effect of rendering constitutional any acts passed prior to the adoption of said amendment which were, at the time of their enactment, unconstitutional. A. G. R. 1915.

If the property of lodges can be exempted, it must be because they come within the constitutional classification of "institutions of purely public charity". Ownership is not made a basis of exemption, but the authority for exemption is referable to the use to which the property is appropriated and applied, and inasmuch as any exemption is attempted upon the basis of ownership it must be wholly void. A. G. R. 1915.

The term "institution" in the last analysis has reference to property only. Constitutional authority for statutory exemption is limited to establishments devoted to purely public charity and to property of associations or organizations, the activities of which are confined to the administration of a purely public charity. Whether or not a charity is public depends upon the particular facts in each case. A. G. R. 1915.

Under authority of the provision of the constitution, under which the sections under consideration were enacted, exemptions from taxation may be extended only to property of substantial permanence, devoted exclusively to charitable purposes of such nature as to be available to a class of indefinite number and involuntary membership, administered without any idea to private gain or profit and not limited to the membership of a secret organization and their widows and orphans, which results in a substantial public benefit. A. G. R. 1915.

No authority rested in the legislature at the time of the enactment of Section 5365-1 to make such exemption and said section is unconstitutional, null and void, and the funds of a fraternal benefit organization licensed under the act of May 31, 1911, 102 O. L., 553, are not exempt from taxation. A. G. R. 1915.

However, if the same provisions as to exemptions as are now upon the statute books of the state (Sections 5364-5365) were re-enacted by the legislature under the present constitution, it is conceived that certain property of these orders, associations, or organizations under discussion, which are not now exempt from taxation would become so. For instance, homes for widows of members, orphans of members, aged and indigent members of these organizations maintained by them, are clearly charitable and the property dedicated to the

uses and purposes of those homes may be used exclusively for charitable purposes although not a public charity and therefore it is deemed competent for the legislature, under the present constitution, to exempt property of such character which is now, or may hereafter be, used exclusively for charitable purposes. A. G. R. 1915.

Municipal universities.

SEC. 7915-1. All such property, personal or mixed, or real property located within the county in which an university, college or other educational institution of any municipal corporation is located, heretofore or hereafter so given to or received by the board of directors of a university, college or other educational institution of any municipal corporation, the rents, issues, profits and income of which are used exclusively for the use, endowment or support of a university, college or other educational institution of any municipal corporation, shall be exempted from taxation so long as such property or the rents, issues, profits or income thereof is used for and exclusively applied to the endowment or support of such university, college or other educational institution of such municipal corporation. (102 v. 32.)

Township memorial associations.

SEC. 3410-7. This section provides that the property of township soldiers' and sailors' memorial associations "shall be free from taxation by state, county or municipality."

Law libraries.

SEC. 3055. For the use of such law library, the board of county commissioners of the county shall provide at the expense of the county, a suitable room or rooms with sufficient and suitable bookcases, in the county court house, or if there is no suitable room or rooms to be had therein, any other suitable room or rooms at the county seat, and shall heat and light them. The books and furniture of the law library association used exclusively in such library, shall be exempt from taxation. (R. S. Sec. 2679.)

Shares of stock of certain corporations.

SEC. 192. No person shall be required to list for taxation a share of the capital stock of an Ohio corporation; or a share of the capital stock of a foreign corporation, the property of which is taxed in Ohio in the name of such corporation; or a share of the capital stock of any other foreign corporation, if the holder thereof furnishes satisfactory proof to the taxing authorities that at least two-thirds of the property of such corporation is taxed in Ohio and the remainder is taxed in another state or states, provided such corporation, as a fee for the privilege of exercising its franchise in Ohio, pays annually the same percentage upon its entire authorized capital stock that is required by law to be paid by a domestic corporation on its subscribed or issued capital stock. (R. S. Sec. 148c.)

Stock of foreign corporation not exempt from taxation if part of its property is located in a foreign country. A. G. R. 1915, p. 387.

For taxation of stock in foreign corporations or of bonds deposited by foreign corporations, see G. C. §§ 5324 and 5327.

Taxation of Property of Foreign Corporations, see G. C. § 5404.

Deposits of Insurance Co., see 5437 G. C.

Tax on stocks in foreign corporation held by residents of Ohio, see 25 O. S. 1; 35 O. S. 28; 114 U. S. 511; 2 N. P. (N.S.) 617.

If a part of the property of a foreign corporation is taxed in a foreign country, (not state of United States) the stockholders of such corporation can under no circumstances claim exemption from taxation on account of their shares therein. A. G. R. 1914.

Shares of capital stock.

SEC. 5372. This section provides that "no person shall be required to list for taxation any shares of the capital stock of a company, the capital stock of which is taxed in the name of such company." (For annotation see Sec. 5372 next chapter.)

CHAPTER TEN.

LISTING PERSONAL PROPERTY.

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Tax commission shall direct and supervise assessment of property.

SEC. 5579. In addition to all other powers and duties vested in or imposed upon it by law, the tax commission of Ohio shall direct and supervise the assessment for taxation of all real and personal property in the state. County auditors shall, under the direction and supervision of the tax commission of Ohio, be the chief supervising, assessing officers of their respective counties, and, with the local assessors selected in the manner provided in this act, shall list and value real and personal property for taxation, within and for their respective counties, except as may be otherwise provided by law. There shall also be in each county, a board to hear complaints and revise assessments of real and personal property for taxation, which shall be known as the county board of revision. (106 v. 246, Sec. 2.)

The duty to list property pertaining to a business located wholly within the county, but carried on in more than one township or taxing district of the company devolves by virtue of the provisions of section 5579 G. C. upon the county auditor. A. G. R. 1916.

Returns for taxation to county auditor; powers and duties.

SEC. 5366. Whenever any person, company, firm, partnership, association or corporation was by any existing provision of any law repealed by this act required to return property to the district assessor for taxation, the same shall be returned to the county auditor; and whenever the district assessor was by any provision of any such law charged with any duty or vested with any powers in making up the original tax list, or in listing and valuing any property which has been omitted from the tax list, or in correcting any returns or statements of property for taxation, either with respect to its valuation or amount, such duty shall devolve upon and be performed by the county auditor and such power shall vest in him and be exercised by him. (106 v. 246, Sec. 3. W. L. Sec. 1.)

This section is without any operative force and is null and void because in contravention of the provisions of Section 16 of Article II of the constitution of this state. A. G. R. 1916.

With this section eliminated county auditors are without authority to originate or change any assessments of real property under any provision of the General Code now in force. A. G. R. 1916.

Time when property shall be listed for taxation and when liability attaches.

SEC. 5366-1. The listing of all property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, except the stock in trade of transient persons, shall be made between the second Monday of April and the first Monday of June, annually. The listing and valuation of all such property for taxation shall be made as of the day preceding the second Monday of April, annually, and all personal property, moneys, credits and investments except as otherwise provided in this act shall be listed and valued with respect to the ownership thereof on said date and in the place where then taxable. Wherever any property is by any existing provision of law required to be listed or returned for taxation as of a day other than the day preceding the second Monday of April, such provision shall be deemed to mean the day preceding the second Monday of April, and whenever the liability of any person or of any property to taxation is, by any existing provision of law, to be determined by reference to a day other than the day preceding the second Monday of April, said liability shall be determined by reference to the day preceding the second Monday of April; provided that the provisions of this section shall not apply to the return of the resources and liabilities of incorporated and unincorporated banks, nor in any case where property is required to be returned for taxation, or to be valued, by the tax commission of Ohio; nor in any case where the liability of any person or of any property to taxation is required to be originally determined by the tax commission of Ohio. (106 v. 247, Sec. 4. W. L. Sec. 6.)

The purpose and effect of Section 5366-1, G. C., is to fix the time as of which and the period within which all property which is required to be assessed within each year shall be valued, and assessors may not begin the work of appraising real property for the year 1916 before the second Monday in April of said year. A. G. R. 1916.

The fact that the legislature has designated a specific day as that on which property is to be listed for taxation, does not prevent the determination of the value of the property listed for taxation as of other periods of the year. Accordingly, the legislature may provide for taxing the average monthly amount of moneys, credits or other capital, even if such property is in the form of securities exempted from taxation on the day provided for listing property for taxation: Shotwell v. Moore, 129 U. S. 590, 6 O. F. D. 500.

Annual meeting on the second Monday of April for instruction.

SEC. 5367. The assessors of each county shall, annually, on the second Monday of April, meet at the office of the county auditor or such other place at the county seat as he may designate. Notice of such meeting shall be mailed, or otherwise delivered, to each assessor, by the auditor, not less than five days before the date of such annual meeting. The auditor shall meet with the assessors and instruct them as to their duties, directing their attention particularly to the provisions of law and the rules and instructions of the tax commission of Ohio relating to the listing and valuing of property for taxation. The auditor also may at any other time call assessors before him for additional instructions, and assessors shall obey such calls and instructions. The county auditor shall provide and deliver to the assessors at such annual meeting the necessary blanks and instructions. (106 v. 253, Sec. 25.)

This section was repealed by the Warnes Law 103 v. 786, and re-enacted 106 v. 253.

The county commissioners have no authority to allow to the county auditor compensation for furnishing blanks to assessors: Sage v. Commissioners, 82 O. St. 186.

Delivery of notice to each person for statement of property.

SEC. 5368. The assessor, between the second Monday of April and the first Monday of June, annually, shall deliver to each person, resident of his township, village or ward, of full age, and not an insane person, at his usual place of residence or business, a written or printed notice, requiring such person to make out a statement of the property which, by law, such person is required to list, accompanied with printed forms, in blank, for such statement. The assessor, at the time he delivers such notice and blank forms, shall demand and receive such statement, unless such person requires further time to furnish the same, in which case he shall do so within five days thereafter. The failure of the assessor to perform any duty imposed upon him by law, within the time limited therein shall not invalidate any assessment, nor relieve any person from listing property for taxation. (As amended 106 v. 253, Sec. 26.)

Oath of party listing; fixing values.

SEC. 5369. A person or party so listing property, or other items named in the statement described in the next preceding section, shall take and subscribe an oath or affirmation according to law, to be administered by the assessor, to the effect, adapting the form to the capacity in which the person making the return acts, that the statement

contains, as he verily believes, a true account of all the taxable personal property, moneys, credits, and investments in bonds, stocks, joint-stock companies, annuities or otherwise, owned or controlled by such person for his own use, or as parent, guardian, trustee, executor, administrator, receiver, accounting officer, factor, agent, or otherwise, and also of all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, held for him, or any one residing in this state, for whom he is required by law to list, by any person residing in or out of this state, and not listed for taxation in pursuance of law in this state by such holder, and every interest and right, legal or equitable, of the person listing and of those for whom he is required by law to list in bonds, stocks, joint-stock companies, or otherwise, which he is required by law to list for taxation, and that the value affixed to each of said items is the value thereof as ascertained by the usual selling price thereof for cash, at voluntary sales thereof, at the time and place of listing; and if there is no usual selling price, then at such price as could be obtained therefor in money, at such time and place, and that he has not made an acknowledgment or agreement, or contracted a debt, without receiving an adequate consideration therefor or resorted to any device, or created a trust, or sold or exchanged or disposed of money, property, or effects, which were taxable in this state, for United States bonds or other non-taxable securities or moneys, for the purpose of evading taxation, or diminishing the amount of his return for taxation, and that all interest that he has or owns in any credit or evidence of indebtedness, secured in any manner, upon real estate or personal property, situated outside of the county in which he resides, or in taxable stocks or bonds, or in stocks or bonds of a foreign corporation, has been duly listed by him for taxation. (R. S. Sec. 2749.)

Who shall list personal property.

SEC. 5370. Each person of full age and sound mind shall list the personal property of which he is the owner, and all moneys in his possession, all moneys invested, loaned, or otherwise controlled by him, as agent or attorney, or on account of any other person or persons, company or corporation, and all moneys deposited subject to his order, check, or draft; all credits due or owing from any person or persons, body corporate or politic, whether in or out of such county; and all money loaned on pledge or mortgage of real estate, although a deed or other instrument may have been given for it, if between the parties, it is considered as security merely. The property of a ward shall be listed by his guardian, of a minor child, idiot, or lunatic having no guardian, by his father, if living, if not, by his mother, if living, and if neither father nor mother is living, by the person having such property in charge; of a person for whose benefit property is held in trust, by the trustees; of an estate of a deceased person, by his executor or administrator; of corporations whose assets are in the hands of receivers, by such receivers; of a company, firm, or corporation, by the president or principal accounting officer, partner or agent thereof; and all surplus or undivided profits held by a society for savings or bank having no capital stock, by the president or principal accounting officer. (R. S. 2734.)

A resident agent must list money invested and loaned by him for a nonresident: McKnight v. Dudley, 103 Fed. 918, 15 O. F. D. 785.

An agent for collection purposes only, need not list mortgages of a nonresident creditor: Myers v. Seaberger, 45 O. S. 232.

A resident who owns property which is under the control of a nonresident agent for purposes of investment must return such property for taxation: Lee v. Dawson, 8 O. C. C. 365, 4 O. C. D. 442.

Credits which belong to a nonresident in Ohio are not taxable in Ohio, unless they are held here by a guardian, trustee or agent of the owner; in which cases such guardian, trustee or agent must return them for taxation: Grant v. Jones, 29 O. S. 506.

Notes and mortgages which are held by a peddler are not taxable in this state, if such owner has no domicile in this state, even though he visits such state regularly twice a year: Grant v. Jones, 39 O. S. 506.

A judgment must be listed by the judgment creditor at its actual value in money, and the fact that there are pending proceedings to reverse it, does not exempt it from taxation: Cameron v. Cappeller, 41 O. S. 533.

Guardians of minors must list for taxation the personal property of their wards: Campbell v. Park, 32 O. S. 544.

In case of the death of the ward, before the time for listing property for taxation, the administrator of such decedent, and not the guardian, should list such property for taxation, when the title of the administrator relates back to the time of the death of the ward: Sommers v. Boyd, 48 O. S. 648.

The fact that the estate is insolvent does not exempt from taxation the funds of such estate in the hands of the administrator: In re Robb, 5 O. N. P. 52, 5 O. D. (N. P.) 227, 5 O. D. (N. P.) 381.

Funds derived by an administrator from the sale of mortgaged premises and deposited by him in bank preparatory to payment to the mortgagees, should be listed by the administrator for taxation, notwithstanding the entire amount will be required to satisfy the liens which have been established and ordered paid: Gregg v. Hammond, 4 O. N. P. (N. S.) 214, 16 O. D. (N. P.) 549.

Under 5326, 5328, 5370 and 5371, General Code, all deposits which the person who resides in Ohio is entitled to withdraw in money, upon demand, should be listed for taxation at the place where such person resides, regardless of the place where such deposits are held. The same is true of credits and investments which are controlled by a person in Ohio though held outside of Ohio.

Where such deposits, credits or investments are subject to joint ownership or management by a party who resides in Ohio and by another who resides outside of Ohio, one-half thereof

should be listed in Ohio at the place of residence of the party residing therein. A. G. R. 1912, p. 596.

An individual resident of the state of Ohio, who is appointed a trustee under a will of a decedent of Illinois, the estate of whom was administered in that state, and holds stock in a Michigan corporation, for the purpose of paying the income therefrom to certain beneficiaries, one of whom resides in Ohio, without general power to reinvest, must list the shares of stock for taxation in the Ohio county in which he resides, though the certificates thereof are kept in Michigan. A. G. R. 1914, page 1277.

Where personal property shall be listed.

SEC. 5371. A person required to list property, on behalf of others, shall list it in the township, city, or village in which he would be required to list it if such property were his own. He shall list it separately from his own, specifying in each case the name of the person, estate, company, or corporation, to whom it belongs. Merchants' and manufacturers' stock, and personal property upon farms shall be listed in the township, city or village in which it is situated. All other personal property, moneys, credits, and investments, except as otherwise specially provided, shall be listed in the township, city, or village in which the person to be charged with taxes thereon resides at the time of the listing thereof, if such person resides within the county where the property is listed, and if not, then in the township, city, or village where the property is when listed. (R. S. Sec. 2735.)

An agent who resides in Ohio and who represents a nonresident must list for taxation all moneys which he owes and controls, which are the property of such nonresident principal: *McKnight v. Dudley*, 103 Fed. 918, 15 O. F. D. 785.

If a woman who owns certain credits is domiciled in Ohio at the time when her husband is committed to an insane asylum, and subsequently she changes her residence to a place without the state, she has, under such circumstances, the legal capacity to change her residence; and she may subsequently enjoin the levy and collection of a tax upon her credits: *McKnight v. Dudley*, 148 Fed. 204, 78 C. C. A. 162, 15 O. F. D. 288.

Credits which belong to a nonresident of this state are not to be listed for taxation in this state, even if they are secured by a mortgage on realty herein unless they are held by a guardian, trustee or agent of the owner: *Grant v. Jones*, 39 O. S. 506.

Intangible personal property can be taxed only at the domicile of the owner: *Walker v. Jack*, 88 Fed. 576, 31 C. C. A. 462, 10 O. F. D. 359.

A resident agent must list notes and mortgages of a nonresident who has surrendered control thereof to such agent for investment: *Jack v. Walker*, 96 Fed. 578, 10 O. F. D. 1.

Ever since the state of Ohio has established an ad valorem rule of taxation, it has taxed credits belonging to residents without regard as to where such credits were payable, or where the debtor was domiciled: *Worthington v. Sebastian*, 25 O. S. 1.

The personal property of an unincorporated company must be listed in the taxing district in which its principal office for doing business is located, and its managing agent resides: *Sait Co. v. Davis*, 21 O. S. 555.

The securities of a partnership are to be listed in the township where the managing partner resides: *Barricklow v. Bowland*, 3 O. N. P. (N.S.) 78, 15 O. D. (N.P.) 743.

For the purpose of determining the place at which the property of a corporation is to be listed for taxation, the place which is designated in the articles of incorporation as the principal office of the corporation is its residence: *Peiton v. Transportation Co.*, 37 O. S. 450.

If a foreign investment or insurance company has deposited bonds with the proper state officer, in compliance with the statute relating to the admission of foreign corporations to do business in this state, such bonds are to be listed for taxation in the county in which such foreign corporation has its main office in this state: *Sims v. Best*, 1 O. C. C. (N.S.) 41, 15 O. C. D. 149.

Bonds and stocks which are deposited by a foreign fire insurance company with the superintendent of insurance, by virtue of G. C. § 9565, is to be regarded as having a situs in Ohio, and as being taxable in this state: *Assurance Co. v. Halliday*, 110 Fed. 259, 13 O. F. D. 682; *Assurance Co. v. Halliday*, 126 Fed. 257, 61 C. C. A. 271, 14 O. F. D. 73, 1 O. L. R. 643; *Assurance Co. v. Halliday*, 127 Fed. 830, 14 O. F. D. 305; *Insurance Co. v. Bowland*, 196 U. S. 611, 14 O. F. D. 543, 2 O. L. R. 515.

A husband has the right to fix the domicile and where a man resides half the time in township No. 1, votes therein and desires to consider that place as his domicile, he may rightly list for taxation therein his personal properties, moneys, credits and investments, except merchant and manufacturer's stock and personal property upon farms, even though his wife with whom he lives, part of the time, resides in township No. 2 and refuses to move to township No. 1. A. G. R. 1911-1912, p. 1052.

One who owns a farm which is rented on shares, and at which the owner has never resided, cannot claim residence there for purposes of personal property taxation; and if at the time he has no other actual place of abode his legal residence is determined by the place at which he had last acquired a legal domicile. A. G. R. 1915, p. 121.

By virtue of Section 192, General Code, a shareholder in a foreign corporation, two-thirds of whose property is taxed in Ohio and the remainder in another state or states, is not obliged to list his shares of stock in Ohio provided, "such corporation, as a fee for the privilege of exercising its franchise in Ohio, pays annually the same percentage upon its entire authorized capital stock that is required by law to be paid by a domestic corporation on its subscribed or issued capital stock."

Otherwise, such shares must be listed under Section 5371, General Code, in the taxing district in which the owner of the stock resides at the time of listing. A. G. R. 1912, p. 2037.

Under the rule applicable to persons described by section 5371, General Code, a corporation whose place of business is stated in its articles of incorporation to be at Mentor, Ohio, but

whose actual place of business is in Cleveland, must return its personal property at the place where such property is located for the reason that the owner resides outside of the county where the property is listed.

Moneys on deposit in banks of the City of Cleveland, and credits, however, have no situs of their own and so the law presumes their situs to be that of the domicile of the owner. Such moneys and credits must be given a situs and be subjected to taxation by listing in Mentor, Ohio. A. G. R. 1913, p. 638.

Where personal property shall be listed, when owner moves from one subdivision to another.

SEC. 5371-1. Personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise of persons removing from one county, city, village, township or special taxing district to another, between the second Monday of April and the first Monday of June, in any year, shall be listed in either place in which the owner is first called upon by the assessor, or in which the property is located when listed, as the case may be. (106 v. 238, Sec. 9.)

Listing of property in transit.

SEC. 5371-2. Personal property in transit shall be listed in the township, city or village where the owner resides; provided, however, that if such property is intended for a particular business, it shall be listed at the place where the property of such business is required to be listed. (106 v. 248, Sec. 10.)

Listing of property of deceased person, resident of this state.

SEC. 5371-3. Personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise belonging to the estate of a deceased person whose residence at the time of his decease was in this state, shall be listed by his executors, administrators, trustees or personal representatives, whether residents of this state or not, in the township, city or village in which the deceased would have been required to list the same if he had been or was living on the day preceding the second Monday of April. (106 v. 249, Sec. 11.) - tions 5406-1, 5406-2, 5406-3, G. C. 106 v. 249 Sec. 12.)

Listing of property, by person, partnership or unincorporated company.

SEC. 5371-4. Property pertaining to a business carried on by a person, firm, partnership, association or unincorporated company shall be listed in the township, city or village in which such business is carried on. Provided, however, that if such business is carried on in more than one township, city, village or county in this state, the value thereof shall be ascertained and apportioned to and assessed in the several townships, cities, villages or counties in which such business is carried on, in the manner provided for the assessment of the property of incorporated companies by sections 13, 14 and 15 of this act. (Sections 5406-1, 5406-2, 5406-3, G. C.) 106 v. 249 § 12.

The phrase "the value thereof shall be ascertained * * * in the manner provided for the assessment of the property of incorporated companies by sections 13, 14 and 15 of this act," if business is carried on in more than one township, city, village or county in this state, means that in such case, the value of the property pertaining to such business shall be ascertained as an aggregate and the whole property pertaining to such business shall be considered together, though not as a unit and going concern. A. G. R. 1916.

The listing and valuation of property pertaining to a business carried on in more than one taxing district, but wholly within one county, is to be made by the county auditor. If the business is carried on in more than one county this duty devolves upon the Tax Commission of Ohio. A. G. R. 1916.

The property pertaining to a business to which the special rules of section 5371-4 G. C. apply embraces only movable property, i. e., tangible personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise pertaining to a business; such property does not include real estate. A. G. R. 1916.

A "business" within the meaning of Section 5371-4 G. C. is any occupation which deals with property in a commercial way, i. e., with the object of selling or otherwise dealing with the same for gain but the operations of which with respect to that property commence after it is severed from the realty. This definition excludes "farming" and all related occupations, such as that of a truck gardener, on the one hand, and all occupations which do not deal with property as such and the activities of which constitute the rendition of services, such as professions, on the other hand. A. G. R. 1916.

As to nursery and florists.

Miller v. Miller, 15 N. P. (N. S.) 33.

A. G. R. 1914, p. 1180.

A. G. R. 1916.

How and in whose name personal property shall be listed.

SEC. 5372. Personal property of every description, moneys and credits, investments in bonds, stocks, joint stock companies or otherwise, shall, except as otherwise provided, be listed in the name of the person who was or became the owner thereof on the day pre-

ceding the second Monday of April, in each year, and the transfer or sale of any taxable property subsequently thereto shall not authorize any person to omit the same from his list nor the assessor to fail to assess the same in the name of the person who would have been required to list it, although such listing be not made until after the sale or transfer of such property; but all such property shall be listed for taxation in the same manner as if no sale or transfer thereof had been made. No person shall be required to list for taxation any shares of the capital stock of a company, the capital stock of which is taxed in the name of such company. (As amended, 106 v. 247 § 5.)

The capital stock of a corporation consists of the money and property which has been subscribed and paid in, in order to carry on the purpose of such corporation: Jones v. Davis, 35 O. S. 474; Lee v. Sturges, 46 O. S. 153; Hubbard v. Brush, 61 O. S. 252; Lander v. Burke, 65 O. S. 532; Sturges v. Carter, 114 U. S. 511, 5 O. F. D. 428.

Preferred stock is not an evidence of indebtedness, but is the capital stock of the corporation which issues it, and is not taxable if the capital stock of such corporation is taxed in its name: Miller v. Ratterman, 47 O. S. 141.

If all the business of a corporation is transacted in Ohio and its property is located herein, and is listed for taxation in the name of the corporation, the shares of stock of such corporation are exempt from taxation: Hubbard v. Brush, 61 O. S. 252.

An Ohio corporation must list its capital stock for taxation; and an individual owner of shares of stock need not list such shares: Jones v. Davis, 35 O. S. 474.

Investments by residents of this state in the shares of stock of a corporation, whether domestic or foreign, are not exempt from taxation under this section, except when the property of the corporation is taxed in its name in this state: Lander v. Burke, 65 O. S. 532.

A corporation organized under the laws of this state does not cease to be such, nor become a foreign corporation, by accepting from another state or country a grant of the privilege of owning and using real and other property therein necessary, or convenient in carrying on its corporate business. Accordingly, this statute does not authorize the exemption of stock in an Ohio corporation, the property of which is practically all situated in the Dominion of Canada, and is taxed there, and not in Ohio: Lander v. Burke, 65 O. S. 532.

The exemption provided for by this statute does not apply to shares of stock in a foreign corporation which has property in Ohio, as well as property without the state, and which pays taxes in Ohio upon that part of its property which is situated in Ohio, even if a considerable amount thereof is situated in this state: Lee v. Sturges; Insurance Co. v. Ratterman. 46 O. S. 153.

This exemption does not apply to shares of stock in a corporation which is formed by the consolidation of an Ohio corporation with corporations of other states, even though such consolidated corporation pays taxes in Ohio upon its property which is situated in Ohio: Lee v. Sturges; Insurance Co. v. Ratterman, 46 O. S. 153; Sturges v. Carter, 114 U. S. 512, 5 O. F. D. 428.

A person who resides in Ohio and owns stock in a foreign corporation, the capital of which is taxed in the state in which such corporation is situated, is required to list such shares of stock for taxation in this state: Bradley v. Bauder, 36 O. S. 28.

For provisions relating to the listing of the capital stock of Ohio and certain foreign corporations see Section 192 G. C. as follows:

SEC. 192. No person shall be required to list for taxation a share of the capital stock of an Ohio corporation, or a share of the capital stock of a foreign corporation, the property of which is taxed in Ohio in the name of such corporation; or a share of the capital stock of any other foreign corporation, if the holder thereof furnishes satisfactory proof to the taxing authorities that at least two-thirds of the property of such corporation is taxed in Ohio and the remainder is taxed in another state or states, provided such corporation, as a fee for the privilege of exercising its franchise in Ohio, pays annually the same percentage upon its entire authorized capital stock that is required by law to be paid by a domestic corporation on its subscribed or issued capital stock. (R. S. Sec. 148c.)

Listing of property held in trust capacity or fiduciary relationship.

SEC. 5372-1. Personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise in the possession or control of a person as parent, guardian, trustee, executor, administrator, assignee, receiver, official custodian, factor, agent, attorney, or otherwise, on the day preceding the second Monday of April in any year, on account of any person or persons, company, firm, partnership, association or corporation, shall be listed by the person having the possession or control thereof and be entered upon the tax lists and duplicate in the name of such parent, guardian, trustee, executor, administrator, assignee, receiver, official custodian, factor, agent, attorney or other person, adding to such name words briefly indicating the capacity in which such person has possession of or otherwise controls said property, and the name of the person, estate, firm, company, partnership, association or corporation to whom it belongs; but the failure to indicate the capacity of the person in whose name such property is listed or the name of the person, estate, firm, company, partnership, association or corporation to whom it belongs shall not affect the validity of any assessment thereof. (106 v. 247. Sec. 6.)

If an assignment for the benefit of creditors has been made the assignee has control of the property thus assigned, and his continuing to use it in the operation of the business, under order of the court, and his not reducing it to money for distribution among the creditors, makes such property taxable; and the assignee is bound to list it for taxation: French v. Bohe, 64 O. S. 323.

The provisions of the statutes formerly in force and governing the return of personal property for taxation, did not by their terms require assignees, clerks of court, sheriffs and master commissioners to return for taxation personal property in their possession or control on the day preceding the second Monday of April in any year.

The manifest purpose of the legislature in enacting the provisions of sections 5372-1 and 5372-2 of the General Code was to secure the return of such property in just such cases.

Under the provisions of said statutes, assignees, receivers, sheriffs and master commissioners are required to list for taxation all personal property, including moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, in their possession or control on the day preceding the second Monday of April in any year, on account of any person or persons, company, firm, partnership, association or corporation, and that such property shall be entered on the tax lists and duplicate in the manner provided in said section.

If on or after said listing day in any year any such property becomes subject to the possession or control of an assignee, receiver, sheriff or master commissioner on account of any other person who was the owner thereof on said listing day and such property has not been listed for taxation, then under provision of said section 5372-2, G. C., said property must be listed by such assignee, receiver, sheriff or master commissioner, in the manner provided in said section 5372-1, G. C. A. G. R. 1916.

Property omitted shall be listed.

SEC. 5372-2. If, on or after the day preceding the second Monday of April in any year, any personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise become subject to the possession or control of a person as parent, guardian, trustee, executor, administrator, assignee, receiver, official custodian, factor, agent, attorney or otherwise, on account of any other person who was the owner thereof on said date, and such personal property has not been listed for taxation, such property shall be listed by such parent, guardian, trustee, executor, administrator, assignee, receiver, official custodian, factor, agent, attorney or other representative as provided in the next preceding section. (106 v. 247 § 7.)

How property listed by a person on behalf of others. Pawnbrokers.

SEC. 5372-3. A person required to list property on behalf of others shall list it separately from his own, specifying, in each case, the name of the person, estate, firm, company, partnership, association or corporation to whom it belongs, and the capacity in which he holds it, and every person engaged in the business of receiving property in pawn as security for money or other thing advanced to the pawnier shall list all the property pawned and held by him as a pawn broker, on hand on the day preceding the second Monday of April, annually, and taxes shall be charged to him upon the value of such property. (106 v. 250 § 16.)

Judicial officers shall make annual statement showing persons holding property in trust or fiduciary capacity.

SEC. 5372-4. The clerk of each common pleas, superior and municipal court, the judge of each probate court, and the judge or clerk of each court of insolvency shall, on the second Monday of April, annually, deliver to the county auditor a statement, in writing, showing the names of every administrator, executor, guardian, trustee, receiver, assignee, and every other person or officer legally in charge and control of any estate in any such court, together with the aggregate value of each and every class of property in the hands of each such administrator, executor, guardian, trustee, receiver, assignee, person or officer, as shown by the last inventory or report filed by each of them in such court. For this service, such judge or clerk shall receive the sum of ten cents for each estate so certified, to be paid out of the county treasury for his fee fund. (106 v. 264 § 67.)

When person a resident for taxation purposes.

SEC. 5373. A person who has had his actual or habitual place of abode in this state for the larger portion of the twelve months next preceding the day before the second Monday of April in each year, shall be a resident of this state for the purpose of taxation, and the personal property which he is required by law to list shall be taxable therein, unless, on or before that day he has changed his place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state. The fact that a person who has so changed his actual place of abode, within six months from so doing, again abides within this state, shall be prima facie evidence that he did not intend permanently to have his actual place of abode without this state. Such person, so changing his actual place of abode and not intending permanently to continue it without this state and not having listed his property for taxation as a resident of this state, for the purpose of having his property listed for taxation within this state, shall be deemed to have resided on the day when such property should have been listed, at his last actual or habitual place of abode within this state. The fact that a person whose actual or habitual place of abode during the greater portion of such twelve months has been within this state, does not claim or exercise the right to vote at public elections within

this state, shall not of itself constitute him a non-resident of this state within the meaning of this section. (R. S. Sec. 2735a.)

For a discussion without decision of what constitutes residence when a domicile has been abandoned, and no new domicile has been acquired, see *Harper v. White*, 35 Bull. 138.

Plainly this statute contemplates that a man may have his place of abode within Ohio for the requisite six months and yet be a nonresident of the state all the time within the meaning of the tax laws of Ohio, and so not taxable in the state on his intangible property, and whether he is such a nonresident or not is for the county to determine upon the evidence introduced in each case: *Rockefeller v. O'Brien, Treas.*, U. S. Dist. Court, 13 O. L. R. 259.

Effect of preceding section.

SEC. 5374. A person or property subject to taxation within this state, shall not be relieved therefrom by the next preceding section nor shall any provision thereof repeal any statute now in force as to the taxation of personal property. (R. S. Sec. 2735a.)

Listing of property by person moving into this state from another.

SEC. 5374-1. The personal property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise of persons moving into this state from another state between the day preceding the second Monday of April and the first day of October, in any year, shall be listed for taxation for such year in all respects agreeably to the provisions of this chapter; unless the person required to list the same shows to the assessor, under oath, and by producing a copy of the assessment duly certified to by the proper officer of the state or sub-division thereof in which said property was assessed, that the same property has been listed and assessed for taxation for that year in such other state, or that such property has been received by him in exchange for property so listed or assessed. (106 v. 248 § 8.)

When statement shall be made and delivered to assessors; oath.

SEC. 5375. A person required to list property for taxation, upon receiving blank forms for that purpose, or within five days thereafter, shall make out and deliver to the assessor thereon a statement setting forth a full and correct list, according to the prescribed forms, of all the personal property of every description which he is required by law to list for taxation in any capacity whatsoever, the value of each and every item thereof, as required by such blank forms, such total values as may be so required, and such full and correct information as may be required thereby. Such statement shall be sworn to as provided in section 5369 of the General Code. (As amended 106 v. 254 § 27.)

Full and accurate statement required.

SEC. 5375-1. Each question in the blank forms for listing personal property shall be answered fully and accurately and each item therein shall be filled out. Where the word "none" truly and completely states the fact respecting any item or question in such blank forms, it may be given as the answer thereto. (106 v. 254 § 28.)

Valuation by assessor, how determined; report to county auditor of false return.

SEC. 5375-2. The assessor shall ascertain and determine the true value in money of the property owned or controlled by each person required to list property for taxation. The assessor in determining the value of such property shall be guided by the valuations and information set forth in the statement of the person listing the property and by any other facts and information coming to his knowledge bearing thereon. The assessor shall report to the county auditor all facts and information obtained with reference to any tax return or statement, and call his attention to any statement he believes to be incorrect or false. (106 v. 254 § 29.)

Duty of assessor when taxable property is converted to non-taxable.

SEC. 5375-3. Whenever an assessor is satisfied from the information set forth in the statement or from any other facts and information coming to his knowledge, that the person making the statement has during the year prior to the day preceding the second Monday of April converted any taxable property into property which is exempt from taxation, for the purpose of preventing such property from being assessed for taxation or of evading the payment of taxes thereon, he shall ascertain and determine the true value in money of the taxable property so converted, and report same to the county auditor who shall proceed to ascertain the facts and cause the property to be listed and assessed for taxation. (106 v. 254 § 30.)

Separate listing of items may be required.

SEC. 5375-4. The tax commission of Ohio may require, in the forms for listing property, prescribed by it, the separate listing of such items of personal property, moneys,

credits, investments in bonds, stocks, joint stock companies or otherwise, subject to taxation and the furnishing of such information respecting the property owned or controlled by the person, or incorporated company required to list, as it deems necessary to secure accurate, full and honest returns and values for taxation. The commission may in such forms, require the person, or incorporated company listing property for taxation, to affix to each and every item prescribed by it therein the true value in money of the property listed thereunder, and may require such statement of total values as it may deem proper to be made. (106 v. 266 § 73.)

This section authorizes the tax commission to prescribe appropriate forms of returns for the separate listing of business property. — A. G. R. 1916.

What statement shall contain and order thereof.

SEC. 5376. Such statement shall truly and distinctly set forth: first, the number of horses, and the value thereof; second, the number of neat cattle, and the value thereof; third, the number of mules and asses, and the value thereof; fourth, the number of sheep, and the value thereof; fifth, the number of hogs, and the value thereof; sixth, the number of pleasure carriages, of every kind, and the value thereof; seventh, the total value of all articles of personal property, not included in the preceding or succeeding classes; eight, the number of watches, and the value thereof; ninth, the number of pianos and organs, and the value thereof; tenth, the average value of the goods and merchandise, which such person is required to list as a merchant; eleventh, the value of the property which such person is required to list as a banker, broker, or stock-jobber; twelfth, the average value of the materials and manufactured articles which such person is required to list as a manufacturer; thirteenth, moneys on hand or by deposit subject to order; fourteenth, the amount of credits as hereinbefore defined; fifteenth, the amount of all moneys invested in bonds, stocks, joint stock companies, annuities, or otherwise; sixteenth, the monthly average amount or value, for the time he held or controlled them, within the preceding year, of all moneys, credits, or other effects, within that time invested in, or converted into bonds or other securities of the United States or of this state, not taxed, to the extent he may hold or control such bonds or securities on said day preceding the second Monday of April. (R. S. Sec. 2737.)

A person who is required to list his property for taxation cannot deduct his indebtedness from his investments in bonds and return the difference thus obtained for taxation: *Payne v. Watterson*, 37 O. S. 121.

The provision of item 15 imposing a tax upon bonds and stocks of foreign corporations owned by residents of Ohio is valid: *Worthington v. Sebastian*, 25 O. S. 1.

Stocks and bonds owned by residents of Ohio which are in the hands of agents out of the state must be taxed in this state: *Worthington v. Sebastian*, 25 O. S. 1.

Shares of stock which have been pledged as collateral for a debt must be listed for taxation in the name of the former owner who has pledged such stock: *Ratterman v. Ingalls*, 48 O. S. 468 approved and followed in *Probasco v. Raine*, 50 O. S. 378).

Shares of stock in a national bank are "investments in stock" and are taxable without deduction: *Chapman v. Bank*, 56 O. S. 310.

Shares of stock are to be listed at their true value in money, and not at the proportion which they bear to the taxable property of the corporation: *Bank v. Miller*, 19 Fed. 372, 5 O. F. D. 247.

Item 16 of this section, which provides that the statement of each person required to list property shall set forth "the monthly average amount or value for the time he held or controlled the same, within the preceding year, of all moneys, credits or other effects, within that time invested in or converted into bonds or other securities of the United States," is not in conflict with § 3701 of the Revised Statutes of the United States, which provides that "all stocks, bonds, treasury notes and other obligations of the United States shall be exempt from taxation by or under state, municipal or local authority": *Shotwell v. Moore*, 45 O. S. 632. This case was affirmed in *Shotwell v. Moore*, 129 U. S. Supreme Court, 590, 6 O. F. D. 500.

The method provided in item 16 of this section for estimating the taxable value of property converted during the year into nontaxable securities is not in conflict with Art. XII, § 2, of the constitution of this state, which requires that laws shall be passed taxing all property by a uniform rule, according to its true value in money: *Shotwell v. Moore*, 45 O. S. 362.

If a taxpayer refuses or neglects to make a return under item 16, the auditor may place such property upon the duplicate by virtue of G. C. § 5398, et seq., for the year in which it should have been returned, together with fifty per cent. penalty: *Sherard v. Lindsay*, 13 O. C. C. 315, 7 O. C. D. 245.

The holder of a life insurance policy invests for the benefit of the beneficiary and the cash surrender value which alone may be deemed his proper interest may not be considered an investment. A policy-holder's interest in an ordinary life insurance policy, or in a limited term policy, which said interest consists merely of a right to a cash payment upon the surrender thereof, is therefore not taxable at all whether the policy is paid up or not. A. G. R. 1912, p. 590.

The words "other effects" in item 16 of Section 5376, General Code, providing for the listing of the average monthly value of moneys, credits, or other effects, which have been converted into non-taxable securities, comprehends personal property only. Real estate converted directly into said bonds need not, therefore, be listed. A. G. R. 1912, p. 543.

When assessor to fix value.

SEC. 5377. An indebtedness created in the purchase of such bonds or securities shall not be deducted from the credits under the fourteenth item of the next preceding section, but the person making such statement may exhibit, to the assessor, the property covered by the first nine items of such section, and allow the assessor to fix the value thereof. In such case the oath of the person making the statement shall be in that regard only that he has fully exhibited the property covered by said nine items. (R. S. Sec. 2737.)

Persons having nothing to list must make oath.

SEC. 5378. An assessor shall require a person called upon to list property for taxation, and claiming to have none subject to taxation, either on his own account or for others, to make oath to the truth of such claim. (R. S. Sec. 2738.)

Listing of dogs.

SEC. 5379. A dog over three months of age shall be listed, either by the owner or by the assessor in the name of the owner, without affixing a valuation thereto. The owner, if he so desires, may affix a value thereto, without swearing to such valuation. A person who keeps or harbors a dog, or who knowingly permits the keeping or harboring of a dog upon his premises, for the purpose of such listing and taxation, shall be the owner thereof. The assessor shall ascertain the owner or harbinger of each dog within his territory, and may examine any person under oath for this purpose. (R. S. Sec. 2754.)

See G. C. §§ 5652 and 5837, et seq.

This section is constitutional: *Holst v. Roe*, 39 O. S. 340.

Dogs are regarded as property in Ohio: *Fagin v. Humane Society*, 6 O. N. P. 357, 9 O. D. (N. P.) 341.

Penalty against assessor.

SEC. 5380. If the assessor fails to list a dog kept or harbored within his territory, he shall forfeit and pay to the state not less than twenty-five dollars nor more than seventy-five dollars. (98 v. 87 § 2.)

"Merchant" defined.

SEC. 5381. A person who owns or has in possession or subject to his control personal property within this state, with authority to sell it, which has been purchased either in or been consigned to him from a place out of this state for the purpose of being sold at a place within this state, is a merchant. (R. S. Sec. 2740.)

When a corporation contracts to sell the output of another corporation to a third person, such corporation is a merchant within the meaning of section 5381, General Code, and taxable as such. Therefore, where the output of the second corporation is located outside of Ohio at the time property is to be listed, such output cannot be taxed. *A. G. R. 1911-1912, p. 676.*

One who buys and sells cattle with a view to profit is a merchant within the meaning of Section 5381, General Code. Such person shall be taxed for such cattle according to the average amount of his stock during the preceding year regardless of the fact that all stock had been disposed of by him, when the assessor calls to assess his property for taxation. *A. G. R. 1911-1912, p. 1360.*

Valuation of certain merchandise.

SEC. 5382. When a person is required by this chapter to make out and deliver to the assessor a statement of his other personal property, he shall state the value of such property appertaining to his business as a merchant. In estimating the value thereof, he shall take as the criterion the average value of such property, as provided in the next preceding section, which he has had from time to time in his possession or under his control during the year next previous to the time of making such statement, if he has been engaged in business so long, and if not, then during such time as he has been so engaged. Such average shall be ascertained by taking the amount in value on hand, as nearly as possible, in each month of the next preceding year in which he has been engaged in business, adding together such amounts and dividing the aggregate amount thereof by the number of months that he has been in business during such year. (R. S. Sec. 2740.)

Referred to as furnishing a statutory guide for estimating a monthly average upon the credits and moneys of an individual under G. C. § 5376, item 16: *Shotwell v. Moore*, 45 O. S. 632.

Consignee and commission merchant.

SEC. 5383. A consignee shall not be required to list for taxation the value of property, the product of this state, which has been consigned to him for sale or otherwise, from a place within this state, nor the value of property consigned to him from another place for the sole purpose of being stored or forwarded if in either case, he has no

interest in such property, or any profit to be derived from its sale. A person engaged in selling property on commission and who does not retain control of such property longer than forty-eight hours is not a merchant within the meaning of the next two preceding sections. (R. S. Sec. 2740.)

This section was held to be valid in *Huddleston v. Hagerty*, 2 O. N. 291, 1 O. D. (N. P.) 331.

Commission merchants who have access to the live stock of another merely in order to show it to buyers and to get a commission upon such sales, are not to be taxed under this section: *Hagerty v. Huddleston*, 60 O. S. 149.

Tangible personal property which has been owned by a resident, and while owned by him is liable to taxation, is not made exempt from taxation by the fact that such property has been sold to a nonresident: *Carrier v. Gordon*, 21 O. S. 605.

Transient traders; their returns.

SEC. 5384. When a transient person locates in a city, village, or township, and offers to sell or otherwise dispose of books or other goods, wares, or merchandise, under the name of a gift book store or any other name or designation, the assessor of the place where such person locates, shall forthwith demand of him the true value in money of his stock in trade. If such person neglects or refuses to return such value under oath, within twenty-four hours after such demand, the assessor shall determine the value as in other cases. In either case he shall forthwith return said valuation to the auditor of the county. (R. S. Sec. 2741.)

Cited: *Flatau v. Mansfield*, 14 O. C. C. 592, 7 O. C. D. 39.

This section does not authorize a tax on credits or investments belonging to a peddler, who visits this state regularly, but has no domicile therein: *Grant v. Jones*, 39 O. S. 506.

Listing of personal property by manufacturers.

SEC. 5385. A person who purchases, receives or holds personal property, of any description, for the purpose of adding to the value thereof by manufacturing, refining, rectifying, or by the combination of different materials with a view of making a gain or profit by so doing, as a manufacturer, and, when he is required to make and deliver to the assessor a statement of the amount of his other personal property subject to taxation, he shall include therein the average value estimated, as hereafter provided, of all articles purchased, received or otherwise held for the purpose of being used, in whole or in part, in manufacturing, combining, rectifying or refining, and of all articles which were at any time by him manufactured or changed in any way, either by combination or rectifying, or refining or adding thereto which, from time to time, he has had on hand during the year next previous to the first day of April annually, if he has been engaged in such manufacturing business so long, and if not, then during the time he has been so engaged. (R. S. Sec. 2742.)

"Straight whisky" which is produced by distillation, and which is refined by allowing it to age, is not to be regarded as raw material: *Block v. Lewis*, 7 O. N. P. 543, 5 O. D. (N. P.) 370.

This section is not intended to tax the same article both as raw material and as a partly manufactured article; and is accordingly not double taxation: *Brewing Co. v. Hagerty*, 8 O. C. C. 330, 4 O. C. D. 276 [affirmed, without report, *Brewing Co. v. Hagerty*, 52 O. S. 671].

This section does not require the manufacturer to include partly manufactured articles, unless they were on hand one year or more previous to making out such statement: *Sebastian v. Candle Co.*, 27 O. S. 459.

A person who buys hogs, slaughters them and converts their carcasses into lard, bacon, cured meats and the like, in order to sell such articles at a profit is a manufacturer within the meaning of this section, and is not a merchant within the meaning of G. C. § 5381: *Engle v. Sohn*, 41 O. S. 691.

If a bridge company has a factory and erects bridges in this state, material which is produced in another state and which is to be sent to the place where it is to be used must be listed for taxation: *Bridge Co. v. Yost*, 22 O. C. C. 376, 12 O. C. D. 448.

When machines produced by a manufacturing company are leased or rented to a user, they cease to be "on hand" within the meaning of section 5385, General Code, and are therefore not to be taxed as manufacturers' stock except in so far as they must be taken into account in computing the value of the manufacturer's stock as a part of the monthly inventory taken at a time before such machines were "on hand."

Machines so leased or rented, however, may be taxed as specific articles of personal property but only when they are located within the state.

The credits which such leases constitute, however, if held in Ohio, are taxable to the corporation at its principal office. A. G. R. 1911-1912, p. 676.

Ascertaining valuation thereof.

SEC. 5386. Such average value shall be ascertained by taking the value of all property subject to be listed on the average basis, owned by such manufacturer, on the last business day of each month the manufacturer was engaged in business during the year, adding such monthly values together and dividing the result by the number of months the manufacturer was engaged in such business during the year. Such result shall be the

average value to be listed. A manufacturer shall also list at their fair cash value, all engines and machinery of every description used, or designed to be used, in refining or manufacturing, except such fixtures as are considered a part of any parcel or parcels of real property, and all tools and implements of every kind used, or designed to be used, for such purpose, owned or used by such manufacturer. (R. S. Sec. 2742.)

Merchant or manufacturer commencing business after certain day.

SEC. 5387. When a person commences business as a merchant or manufacturer after the day preceding the second Monday of April in any year, the average value of whose personal property employed in such business has not been previously entered on the proper assessor's list for taxation, such person shall report to the auditor of the county the probable average value of the personal property by him intended to be employed in such business until the day preceding the second Monday of April thereafter. (R. S. Sec. 2743.)

Rules for valuing personal property generally.

SEC. 5388. In listing personal property, it shall be valued at the usual selling price thereof, at the time of listing, and at the place where it may then be. If there is no usual selling price known to the person whose duty it is to fix a value thereon, then at such price as is believed could be obtained therefor, in money, at such time and place. Investments in bonds, stocks, joint-stock companies, or otherwise, shall be valued at the true value thereof, in money. Money, whether in possession or on deposit, shall be entered in the statement at the full value thereof, except that depreciated circulating notes shall be entered at their current value. A credit for a sum certain, payable in money, property of any kind, labor or service, shall be valued at its true value in money, except that if it is for a specific article, or for a specified number or quantity of any article or articles of property, or for a certain amount of labor or services of any kind, it shall be valued at the current price of such property or of such labor or service, at the place where payable. Annuities, or moneys receivable at stated periods, shall be valued at the sum which the person listing them believes them to be worth in money at the time of listing. (R. S. Sec. 2739.)

Credits are to be listed for taxation at their true value, and not necessarily at their face value: *McCurdy v. Prugh*, 59 O. S. 465.

Choses in action are to be listed at their true value and not at their face value: *Bank v. Hines*, 3 O. S. 1.

A judgment is to be listed for taxation, even though proceedings are pending for reversing the same; but such judgment is to be listed at its true value and not its face value: *Cameron v. Cappeller*, 41 O. S. 533.

A sum of money which is payable annually and at stated periods, and is not paid as a pension, salary or wages, is an annuity: *Wetmore v. State*, 18 O. 77.

If one rents to another a patented article, it should be listed according to its true value in money, which is in part to be determined by its rental value or earning capacity: *State, ex rel., v. Halliday*, 61 O. S. 352.

Deposits in banks are money by virtue of G. C. § 5326, and are to be taxed without deducting from the amount thereof the debts of the owner: *Patton v. Bank*, 7 O. N. P. 401, 10 O. D. (N. P.) 321.

The legislature may impose a penalty for a refusal to list property for taxation: *Adler v. Whitbeck*, 44 O. S. 539.

Valuing additions to tax duplicate.

SEC. 5389. Additions made to the tax list and duplicate by a board of equalization or the county auditor, as to valuation, shall be in strict accordance with the provisions of the next preceding section. (R. S. Sec. 2739a.)

Return by assessor when parties refuse to swear.

SEC. 5390. When a person, company, or corporation refuses or neglects to make return, or, on being requested to do so, refuses or neglects to swear to it, the assessor shall return the fact of such refusal or neglect by the words "refused to list", or "refused to swear", as the case may be. In such case, and in every case in which a company or corporation whose duty it is to make return of taxable property to the auditor refuses or neglects to make or verify such return, the auditor shall add to the amount returned, or ascertained, fifty per cent of such amount, and the amount thus increased shall be the basis of taxation for that year. (R. S. Sec. 2784.)

When assessor shall make the list.

SEC. 5391. When a person refuses or neglects to make or deliver to an assessor the statement required by law, or take and subscribe the oath thereto, the assessor shall proceed to ascertain the number of each description of the several enumerated articles

of personal property and the value thereof, and the value of the unenumerated articles, and the value of the moneys, credits and investments of such person. For this purpose he may examine on oath any person whom he thinks has knowledge thereof. (R. S. Sec. 2750.)

Upon what information the assessor shall act.

SEC. 5392. When the failure to make or verify such statement is occasioned by the sickness or absence of the person who should make or verify it, or by his neglect or refusal so to do, the assessor, if unable to obtain positive evidence of the items or value, may make the statement from general reputation and his own knowledge of facts and circumstances. (R. S. Sec. 2751.)

Oath of assessor to return.

SEC. 5395. The assessor, upon making return to the auditor of the lists and statements, shall take and subscribe an oath, administered by the auditor, or an official authorized to administer oaths; as follows:

I, ..., assessor for, in the county of, do solemnly swear that the value of all personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, of which a statement has been made to me by the person required by law to list them, is truly returned as set forth in such statement; that in each case where by law I have been required to ascertain the items and value of the personal property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, of a person, company or corporation, I have diligently, and by the best means in my power, endeavored to ascertain them; and that, as I verily believe, a full list, with the value thereof estimated by the rules prescribed by law, is set forth in the annexed return; that in no case have I knowingly omitted to demand of any person, of whom by law I was required to make such demand, a statement of the description and value of personal property, of the amount of moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise which he was required to list, or failed to endorse on any return made by me in cases in which the owner refused or neglected to list, or swear, the words "refused to list," or "refused to swear," or "failed to swear," as required by law, any person who purports to have been sworn as returned by me, or in any way connived at any violation or evasion of any of the requirements provided by law in relation to the listing or valuation of property, moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, of any kind for taxation, and that I have returned to the county auditor the original statements made to me, or which I have made, and also the statistics which by law I am required to procure and return. (R. S. Sec. 2757.)

Listing shares of building and loan association for taxation.

SEC. 9675. The shares and loans advanced to its members, shall be exempt from taxation, except that shares of stock upon which no loans have been made or money advanced by the company, shall be considered and held as credits. The members individually shall list for taxation the number of shares held by them, and the true value thereof in money, on the day preceding the second Monday in April each year, and they shall be assessed at such valuation for taxation and taxes as other property. (99 v. 532 § 26.)

A building and loan association is not required to list its surplus and profits for taxation separately; but the real property owned by a building and loan association is subject to the laws relating to the taxation of real property whether purchased by surplus and profits, or not: *Gruner v. Loan Association*, 85 O. S. 484.

CHAPTER ELEVEN.

CORRECTION OF RETURNS.

SECTION

5397. Persons may make statement after assessor has made same.
5398. False return; penalty.
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SECTION

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Persons may make statement after assessor has made same.

SEC. 5397. When any person has been prevented from making or verifying a statement of property for taxation, by sickness or absence, and the assessor has made a statement for him, at any time before the assessment of taxes thereon by the county auditor, such person may make, verify, and file with the auditor the proper statement. In such case before the auditor shall receive the statement the person making it must add to the ordinary affidavit, a statement to the effect that his failure to give to the assessor or verify the statement at the proper time was occasioned by sickness or absence. On the filing of such statement the auditor shall correct the statement made by the assessor. (R. S. Sec. 2752.)

False return; penalty.

SEC. 5398. If a person required to list property or make a return thereof for taxation, either to the assessor or the county auditor, in the year 1911 or in any year thereafter makes a false return or statement, or evades making a return or statement, the county auditor for each year shall ascertain as near as practicable, the true amount of personal property, moneys, credits, and investments that such person ought to have returned or listed for the year 1911 or for any year thereafter for which the inquiries and corrections provided for in this chapter are made. To the amount so ascertained as omitted for each year he shall add fifty per cent., multiply the omitted sum or sums, as increased by said penalty by the rate of taxation belonging to said year or years, and accordingly enter the amount on the tax lists in his office, giving a certificate therefor to the county treasurer who shall collect it as other taxes. (R. S. Sec. 2781.)

This statute applies to corporations as well as to natural persons: Insurance Co. v. Hard, 59 O. S. 248.

This statute does not apply to taxation imposed for the sale of intoxicating liquors: Markie v. Newton, 64 O. S. 493.

This statute does not apply to the cashier of a bank, but only to persons who are required to make return of their property for taxation: State, ex rel., v. Akins, 63 O. S. 182.

The provisions which authorizes the county auditor to add to the return of the property owner taxable property which the owner has not included in his return is remedial and valid, even if made applicable to returns which were made before the enactment of such statute: Gager v. Prout, 48 O. S. 89; see, also Sturges v. Carter, 114 U. S. 511.

To constitute a false return there must appear either a design to mislead and deceive, or at least such culpable negligence in the making of a return as carries with it the consequences of intentional default: Ratterman v. Ingalls, 48 O. S. 468 [followed and approved, Probasco v. Raine, 50 O. S. 378].

The omission of stock which was registered and which could not be concealed is not a false return, whether or not such stock was exempt from taxation, if such omission was made in the bona fide belief that such stock was exempt from taxation: Probasco v. Raine, 50 O. S. 378.

If the return of an insurance company includes an item of reinsurance and states the amount thereof correctly, but lists it as a debt, whereas it is not in legal effect a debt, such return is not false, within the meaning of this statute, since it discloses upon its face the facts necessary to determine the amount which should be listed: Insurance Co. v. Cappellar, 38 O. S. 560.

If one acts in good faith, believing that he has no money or credits taxable, his return, even though erroneous, is not false, and the penalty should not be imposed: Stewart v. Duerr, 20 O. C. 505, 11 O. C. D. 310.

Proceedings before a county auditor for the correction of false returns made by the owner of taxable property are not governed by the precise rules of the code of civil procedure,

regulating the commencement and prosecution of civil actions. No particular style for the proceeding, or form of notice, is prescribed, and it is sufficient if the notice fairly informs the party of the nature of the proceeding and the capacity in which he is required to appear and answer: *Gager v. Prout*, 48 O. S. 89.

If a note has been conveyed by the holder thereof to another in trust, in order to avoid listing the same for taxation, the county auditor may add such note to the return of such holder: *Sisler v. Foster*, 72 O. S. 437.

If the owner of property makes a false return and dies before complaint is made, the auditor may correct such return and add fifty per cent. penalty: *Genin's Executor v. Auditor*, 18 O. S. 534.

If a taxpayer who has omitted property from his return adds the same voluntarily, no penalty attaches, and the auditor is not entitled to the additional percentage therefor: *Topliff v. Shields*, 1 O. D. (N.P.) 551, 32 Bull. 74.

The auditor can make corrections in tax returns for the number of years specified by statute: *Ratterman v. Ingalls*, 48 O. S. 468; *Probasco v. Raine*, 50 O. S. 378; *Rheinboldt v. Raine*, 52 O. S. 160.

In *Ratterman v. Ingalls*, 10 Dec. Rep. 748, 23 Bull. 260, it was held that taxes assessed for former years, under this section, should be placed upon the tax list of the year in which the correction is made.

The proceedings of the auditor may be reviewed in court under G. C. § 12075: *Hagerty v. Huddleston*, 60 O. S. 149.

The proceeding of county auditors, under this section and G. C. § 5401, authorizing such auditors, in certain cases, to make additions to the valuation of the property of individuals, returned for taxation, cannot be reviewed on error under G. C. § 12241. The remedy of the individual for errors or mistakes in such cases, prejudicial to him, is by injunction under G. C. § 12075: *Musser v. Adair*, 55 O. S. 466.

The view that the auditor in listing this property acts in a judicial capacity was expressed in *Myers v. Shields*, 61 Fed. 713, 8 O. F. D. 239; *Brinkerhoff v. Brumfield*, 94 Fed. 422, 10 O. F. D. 88.

That the auditor acts in a quasi judicial capacity, see *State, ex rel. v. Crites*, 48 O. S. 460.

Such proceedings were, however, held not to constitute due process of law: *Myers v. Shields*, 61 Fed. 713, 8 O. F. D. 239; *Brinkerhoff v. Brumfield*, 94 Fed. 422, 10 O. F. D. 88.

The court will not enjoin the auditor from placing upon the duplicate, in the name of the owner thereof, property which such owner has tried to omit from listing for taxation by conveying it temporarily under a deed of trust: *Sisler v. Foster*, 72 O. S. 437.

Mandamus lies to compel the auditor to act in cases coming within this section: *State, ex rel. v. Crites*, 48 O. S. 460.

A wilful under-valuation of property returned for taxation is alone sufficient to constitute a "false return" within the meaning of that term as found in this section.

Insurance Company v. Hard, 59 Ohio State 248.

Omission; "Personal property" defined.

SEC. 5399. If any person required to list property, or make a return thereof for taxation to the assessor or county auditor, or to a board, officer, or person, other than a board composed of officers of more than one county, in the year nineteen hundred and eleven, or in any year or years thereafter fails to make a return or statement, or if such person makes a return or statement of only a portion of his taxable property, and fails to make a return as to the remainder thereof, or if he fails to return his taxable property or part thereof, according to the true value thereof in money, as provided by law, the county auditor for each year as to such property omitted and as to property not returned or taxed according to its true value in money, shall ascertain as near as practicable the true amount of personal property, moneys, credits and investments that such person ought to have returned or listed, and the true value at which it should have been taxed in his county for not exceeding the five years next preceding the year in which the inquiries and corrections provided for in this section and in the next preceding and the next two succeeding sections are made and not in any event prior to the year nineteen hundred and eleven, and multiply the omitted sum or sums by the rate of taxation belonging to said year or years, and accordingly enter the amount on the tax lists in his office, giving a certificate therefor to the county treasurer, who shall collect it as other taxes. The term "personal property" as used in this section shall apply to all kinds of omitted property for the taxation of which, for any of the years in which it was omitted, provision has not been made by law. (R. S. Sec. 2781a.)

This section is constitutional: *Assurance Co. v. Halliday*, 127 Fed. 830, 14 O. F. D. 305. This section is remedial in its character, and is not intended by the legislature to operate as a statute of limitations: *Insurance Co. v. Gibson*, 1 O. N. P. (N.S.) 24, 14 O. D. (N.P.) 80.

Property which has been omitted is to be placed upon the duplicate and taxes imposed thereon, whether such omission was innocent or fraudulent: *French v. Insurance Co.*, 12 O. D. (N.P.) 183.

The bank cashier and not the owner thereof is required to return shares of bank stock: *State, ex rel. v. Akins*, 63 O. S. 182.

Assessment by board.

SEC. 5400. The power and duty of the county auditor under the provisions of the next preceding section, shall extend to all cases where property, taxable within his county,

has for any reason not been assessed and taxed according to its true value in money, as provided by law, except that where provision is made by law for the appraisement and assessment of property by a board composed of officers of more than one county, and such property or part thereof has escaped taxation, the duties provided in such section shall be performed by such board. The board, at any subsequent meeting, may appraise and assess such omitted property for the year or years so omitted, and certify its assessment to the proper officer or officers to be placed upon the tax lists of the proper county or counties for the collection of omitted taxes thereon in a like manner as current assessments are certified by said board, and such officer or officers shall give a certificate therefor to the county treasurer, as in other cases. (R. S. Sec. 2781a.)

Corrections in return of assessor; notice by auditor.

SEC. 5401. The county auditor, if he shall have reason to believe, or is informed that a person has in the year nineteen hundred and eleven or in any year thereafter, given to the assessor a false statement of the personal property, moneys, or credits, investments in bonds, stocks, joint-stock companies, or otherwise, that the assessor has not returned the full amount required to be listed in his ward or township, or has omitted or made an erroneous return of property, moneys, or credits, investments in bonds, stocks, joint-stock companies, or otherwise, which are by law subject to taxation, shall proceed, in said year nineteen hundred and eleven or in any year thereafter at any time before the final settlement with the county treasurer to correct the return of the assessor, and charge such persons on the duplicate with the proper amount of taxes. To enable him so to do, he may issue compulsory process, and require the attendance of any persons whom he thinks have knowledge of the articles, or value of the personal property, money or credits, investment in bonds, stocks, joint-stock companies, or otherwise, and examine such persons, on oath, in relation to such statement or return. The auditor, in all such cases, shall notify every such person, before making the entry on the tax list and duplicate, that he may have an opportunity of showing that his statement or the return of the assessor was correct. The auditor, in all such cases, shall file in his office a statement of the facts or evidence upon which he made such correction; but, he shall not reduce the amount returned by the assessor, without the written assent of the auditor of state, given on a statement of facts submitted by the county auditor. (R. S. Sec. 2782.)

This statute is designed not to make one pay more than another, but to compel all to contribute proportionately from their property to the support of the common government: *Musser v. Adair*, 55 O. S. 466.

This section does not apply to taxes imposed upon the sale of intoxicating liquors: *Markle v. Newton*, 64 O. S. 493.

This section relates to returns which are incorrect as well as to those which are false: *Patton v. Bank*, 7 O. N. P. 401, 10 O. D. (N. P.) 321.

Shares of stock in a national bank are to be listed in the names of the owners, and this section does not apply to the return of a cashier: *Miller v. Bank*, 46 O. S. 424.

This section applies only to persons who are required to return property which belongs to them personally, and does not apply to a cashier's return of the property of a bank: *State, ex rel., v. Akins*, 63 O. S. 183.

Since it is the duty of the cashier of a bank to return stock for taxation, the failure or omission of the owner of such stock not to return it for taxation does not amount to a false return: *State, ex rel., v. Akins*, 63 O. S. 182; see, also, *French v. Insurance Co.*, 12 O. D. (N. P.) 183.

The phrase "false statement" in this section means merely an omission of property from taxation, and in this respect it differs from G. C. § 5398, where the expression "false return" means a guilty evasion: *Ratterman v. Ingalls*, 48 O. S. 468.

The notice provided for in this section does not relate to or cover proceedings under G. C. § 5398: *Myers v. Shields*, 61 Fed. 713, 8 O. F. D. 239, 31 Bull. 336.

If the auditor believes that a false statement of property has been made, notice to the taxpayer to appear the next day to show whether the return was correct or not, is unreasonable, since it does not give sufficient time to the taxpayer to present facts which he may wish to have considered: *Wells v. Adair*, 11 Dec. Rep. 783, 29 Bull. 205.

No particular form of notice is required, it being sufficient if a fair opportunity is given to the taxpayer to present facts which he may wish to have considered: *Gager v. Froust*, 48 O. S. 89; *Lee v. Dawson*, 8 O. C. C. 366, 4 O. C. D. 442.

Notice given to a property owner while he is in attendance before the auditor in pursuance to another notice has been held to be sufficient: *Sturges v. Carter*, 114 U. S. 511, 5 O. F. D. 428.

The auditor may procure information on his own motion, but the law does not impose upon him the duty of search therefor: *State, ex rel., v. Gillilan*, 3 O. N. F. (N. S.) 153, 15 O. D. (N. P.) 756; *State, ex rel., v. Lewis*, 4 O. N. P. (N. S.) 454, 17 O. D. (N. P.) 370.

The requirement that the auditor file a statement of the evidence upon which he has corrected the returns contemplates giving information to the property owners as to the facts: *Bowland v. Shoe Co.*, 10 O. N. P. (N. S.) 243, 21 O. D. (N. P.) 210.

The auditor may add to the tax duplicate without taking testimony or hearing evidence: *Bowland v. Shoe Company*, 10 O. N. P. (N. S.) 243, 21 O. D. (N. P.) 210.

A notice by auditor that a complaint had been made and that taxes would be increased unless cause be shown to the contrary, is sufficient notice to increase tax returns: *Bowland v. Shoe Company*, 10 O. N. P. (N. S.) 243, 21 O. D. (N. P.) 210.

The county auditor may compel the cashier of a bank to appear and testify, and bring with him the books of the bank showing its deposits, or at least the bank has no such interest in maintaining the secrecy of its depositors' accounts as will enable it to enjoin the auditor from such action: *Bank v. Hughes*, 106 U. S. (16 Otto), 523, 5 O. F. D. 161; *Bank v. Hughes*, 6 Fed. 737, 5 O. F. D. 3. (Note however the provisions of section 5624-13, 106 v. 264, No. 66).

If the auditor of the county refuses to act when sufficient information is furnished to him showing that property has been omitted from taxation, mandamus will lie to compel such auditor to act: *State, ex. rel., v. Crites*, 48 O. S. 142; *State, ex. rel., v. Godfrey*, 4 O. C. C. (N. S.) 465, 14 O. C. D. 455 [affirming *State v. Godfrey*, 13 O. D. (N. P.) 535].

The powers conferred upon the county auditor by provision of section 5401 General Code may be exercised before the completion of the tax list as well as thereafter; the only notice required to be given in connection with the exercise of such powers is that provided in said section. A. G. R. 1916.

Costs and expenses, how paid.

SEC. 5402. If a person makes a false statement of the amount of property for taxation, to wholly or partially evade the payment of taxes, he shall pay all costs and expenses that may be incurred under the provisions of the next preceding section, and like fees and costs shall be allowed and paid as are allowed by law, for similar services, and if not paid, may be collected before any justice of the peace of the proper county, by suit in the name of the county commissioners. In all cases under such section, where the statement is found correct, and no intention to evade the payment of taxes appears, the costs and expenses incurred shall be paid out of the county treasury of the proper county, on the order of the county auditor. (R. S. Sec. 2782.)

Penalties; contempt proceedings.

SEC. 5403. When a person summoned to appear before the county auditor and give testimony, under the provisions of the next two preceding sections, or in proceedings against companies or corporations required to make return to the county auditor for taxation, neglects or refuses to appear, or neglects or refuses to answer a question that is put to him by the auditor touching the matter under examination, the auditor shall apply to the probate judge of the county to issue a subpoena for the appearance of such person before him. On the application of the county auditor, the probate judge shall issue a subpoena for the appearance of such person forthwith before him to give testimony. If any person so summoned fails to appear, or appearing, refuses to testify, he shall be subject to like proceedings and penalties for contempt as witnesses in actions pending in the probate court. (R. S. Sec. 2783.)

Cited: *State v. Godfrey*, 13 O. D. (N. P.) 535; *Assurance Co. v. Halliday*, 127 Fed. 830, 14 O. F. D. 305.

Subsequent additions prohibited and changes in valuations not allowed.

SEC. 5403-1. From and after the passage of this act no county auditor, assessor or other officer shall place upon the tax list or duplicate for taxation as of the year nineteen hundred and ten, or as of any year preceding said year, any personal property which should have been assessed for taxation as of such year but which was not returned for taxation therein; nor shall any such officer change in any manner the valuation of the year nineteen hundred and ten, or for any preceding year, of personal property returned for taxation in such year, any act heretofore passed to the contrary notwithstanding; and all acts and parts of acts insofar as they relate to the assessment and valuation of personal property for taxation for the year nineteen hundred and ten, or any preceding year, and insofar as they are inconsistent with the provisions of this section, are hereby repealed. (Act of May 31, 1911, 102 v. 266, Sec. 2.)

Monthly statement of probate court to county auditor.

SEC. 10661. At the end of each month the court shall deliver to the county auditor, a statement showing as to each inventory the aggregate value of each class of property other than real, as shown by the inventories filed during that month, for his use and the use of the proper board of equalization in the performance of their respective duties in relation to returns for taxation of personal property, moneys, rights and credits, and the equalization and correction thereof. (R. S. Sec. 6044.)

Taxes and penalty.

SEC. 10662. Taxes or penalty lawfully placed on a duplicate or added by the county auditor or board of equalization because of a failure to make a true return, or of making a false return for taxation, shall be a debt of the decedent, to have the same priority and be paid as other taxes, and collectable out of the property of the estate either before or after distribution, by any means provided by law for collecting other taxes. No distribution, or payment of inferior debts or claims shall defeat such collection; but no such tax

or penalty can be added before notice to the executor or administrator, and an opportunity is given him to be heard. All taxes omitted by the deceased must be charged on the tax lists and duplicate in his name. (R. S. Sec. 6044.)

Taxes under this section are preferred over liens securing claims of general creditors: Trust Co. v. Stich, 71 O. S. 459.

Beginning of each succeeding tax year.

SEC. 10663. In all additions to the personal tax lists and duplicate made by a county auditor, each succeeding tax year shall be considered as beginning at the time of the completion of the annual settlement with the county treasurer, of the duplicate for the previous year. (R. S. Sec. 6044.)

No allowance of tax inquisitors.

SEC. 10665. No percentage, nor part of any increased tax on the property of such estate, covered by such inventory, for the years which it is required to be listed in the name of the executor or administrator, shall be allowed or paid to a person under a contract for securing for taxation, or putting on the tax list or duplicate property improperly or otherwise omitted, or not listed or returned for taxation. (R. S. Sec. 6044.)

CHAPTER TWELVE.

CORRECTION OF ERRORS.

OMITTED AND DESTROYED PROPERTY.

SECTION		SECTION	
2588.	Correction of errors on tax list and duplicate.	2593.	Charge of omitted land taxes.
2588-1.	Correction of clerical errors.	5571.	Errors to be corrected; deductions.
2589.	Correction of errors in payment or non-payment of taxes.	5573.	Duty of auditor discovering omission.
2590.	Limitation on refund of taxes and assessments.	5574.	Restoring lands omitted from duplicate and assessing taxes thereon.
2591.	Deductions from valuations for injured or destroyed property.	5576.	Assessing improvements and betterments.
2592.	Record of additions and deductions.	5577.	Collection of taxes on the foregoing.

Correction of errors on tax list and duplicate.

SEC. 2588. From time to time the county auditor shall correct all errors which he discovers in the tax list and duplicate, either in the name of the person charged with taxes or assessments, the description of lands or other property or when property exempt from taxation has been charged with tax, or in the amount of such taxes or assessment. If the correction is made after the duplicate is delivered to the treasurer, it shall be made on the margin of such list and duplicate without changing any name, description or figure in the duplicate as delivered, or in the original tax list, which shall always correspond exactly with each other. (R. S. Sec. 1038.)

Mandamus is the proper action to compel the auditor to comply with the requirements of this section, together with G. C. §§ 2589 and 2590: *Lewis v. State*, ex rel., 69 O. S. 473.

Mandamus is the proper remedy to compel a county auditor to correct a clerical error of the board of equalization in making an addition to the tax duplicate without warrant of law, and to call the attention of the county commissioners thereto: *State*, ex rel., v. *Lewis*, 15 O. C. D. 227.

If a mistake has been made by an annual assessor or a decennial appraiser of real estate, or by someone in the office of the county auditor, in the course of transferring valuations to the tax list, in the auditor's office, and by such mistake, the appraisement of a new structure is fixed at a sum higher than that intended to be placed thereon, it is the duty of the county auditor to correct such mistake, when satisfied of its existence, although some of the facts necessary to establish such error do not appear on the records of his office, but are shown by parol evidence only: *Lewis v. State*, ex rel., 59 O. S. 37 [affirming *State*, ex rel., v. *Lewis*, 15 O. C. C. 279, 8 O. C. D. 276].

If raw material in manufactured and partly manufactured articles is by mistake listed for taxation, such material being held to be nontaxable, this is not such an error as might be corrected by the auditor and a refund order issued by him under this and the following sections: *Commissioners v. Rosche Bros.*, 50 O. S. 103.

The words "or when property exempt from taxation has been charged with tax, or in the amount of such taxes or assessments," were inserted in the statute for the purpose of enabling the commissioners to order the repayment of taxes erroneously collected upon property embraced in G. C. § 5439, et seq., and similar provisions as exempt from taxation, and do not cover a case where the property is subject to taxation, but returned or charged in the wrong county: *Butler v. Commissioners*, 39 O. S. 168.

"It was held by this court in *Ohio*, ex rel., v. *Commissioners*, 31 *Ohio State* 271-3, that, under what is now Section 1038, Revised Statutes (2588 G. C.), the county auditor could not correct fundamental errors, but only such as were clerical; and the rule there stated applies as well to the case now under consideration as it did to the case in which it was announced.

State ex rel., *Poe v. Raine*, 47 *Ohio State* 447. To the same effect, *A. G. R.* 1911.

The object of this legislation, (Sections 2588, 2589, 2590, 2591, 2592 and 5571 G. C.), was to provide against the escape from taxation, by error, of any property legally taxable, to accomplish this end, it wisely, and no doubt purposely, adopted general and comprehensive language with which to convey the needful authority instead of attempting to enumerate in specific terms the powers conferred.

State, ex rel., v. *Raine*, 47 *Ohio State* 447.

The original duty of correcting the tax list by striking property therefrom which is exempt from taxation, devolves upon the county auditor and the powers of the tax commission are appellate and limited to the duties of review. *A. G. R.* 1911-1912, p. 613.

The board of county commissioners and the prosecuting attorney of any county are without authority to remit or release any taxes charged upon the tax duplicate of said county against real estate therein upon the ground and for the reason that said real estate is assessed for taxation at an excessive value. *A. G. R.* 1915, p. 2396.

Under section 2588, G. C., a county auditor is empowered to correct clerical errors discovered in the tax list and duplicate, as to description of lands or as to amount of taxes or assessments. When a portion of railroad track, therefore has been returned as being situated in

a municipal corporation, when in reality the same was situated in a township, such a mistake constitutes an error in the description of the lands and the amount of the taxes as contemplated by section 2588, G. C. As the mistake was a mutual mistake of taxes between the taxing authorities and the taxpayer, the fact that payment was voluntarily made does not preclude recovery. A. G. R. 1913, p. 1213.

Correction of clerical errors.

SEC. 2588-1. The county auditor from time to time shall correct any clerical errors which he discovers in the tax list, in the name of the person charged with taxes, the valuation, description or quantity of any tract, lot or parcel of land or improvements thereon, or minerals or mineral rights therein, or in the valuation of any personal property, or when property exempt from taxation has been listed therein, and enter such corrections upon the tax list and duplicate. (106 v. 263, Sec. 62.)

Where, by a clerical error, land has been listed and valued for taxation, although such land never had any existence in fact, the auditor may correct such mistake both in valuation and description: *Commissioners v. Brashears*, 6 Dec. Rep. 1027, 9 Am. L. Rec. 625.

Correction of errors in payment or non-payment of taxes.

SEC. 2589. After having delivered the duplicate to the county treasurer for collection, if the auditor is satisfied that any tax or assessment thereon or any part thereof has been erroneously charged, he may give the person so charged a certificate to that effect to be presented to the treasurer, who shall deduct the amount from such tax or assessment. If at any time the auditor discovers that erroneous taxes or assessments have been charged and collected in previous years, he shall call the attention of the county commissioners thereto at a regular or special session of the board. If the commissioners find that taxes or assessments have been so erroneously charged and collected, they shall order the auditor to draw his warrant on the county treasurer in favor of the person paying them for the full amount of the taxes or assessments so erroneously charged and collected. The county treasurer shall pay such warrant from any surplus or unexpended funds in the county treasury. (R. S. Sec. 1038.)

The term "assessment" in this section does not mean a general tax, but an assessment levied for benefits; and, accordingly, it does not include an assessment under the Dow law, since such charge is a tax: *Van Wert v. Brown* (*State v. Rouch*), 47 O. S. 477.

If a mistake is made in the assessor's return, the commissioners should order the auditor to draw his warrant for taxes thus paid erroneously: *Tenhundfeld v. Commissioners*, 10 Dec. Rep. 513, 21 Bull. 316.

The commissioners have no power to review the determination of the officers who fix the value of property for taxation: *Tenhundfeld v. Commissioners*, 10 Dec. Rep. 513, 21 Bull. 316.

This section does not authorize county commissioners to remit or to release taxes which stand upon the duplicate and are due and unpaid: *Peter v. Parkinson*, 83 O. S. 36.

If taxes are paid voluntarily by reason of a mistake of law, they can not be recovered thereafter, this section being intended to give relief only in case of clerical errors: *Bridge Co. v. Commissioners*, 8 Dec. Rep. 564, 9 Bull. 16; *Sandheger v. Commissioners*, 8 Dec. Rep. 569, 9 Bull. 20.

If the assessor has exercised his judgment in fixing the valuation of lands, which have been platted recently, and such valuation is fixed in excess of that fixed upon adjacent lots, this error is one of judgment, and is not merely clerical. The remedy of the property owner accordingly is not to apply, under this section, for an order of repayment of taxes, but by appeal to the proper parties having authority to equalize valuations: *Davis v. Commissioners*, 18 O. C. D. 817.

In a proceeding in mandamus, the court can require the auditor to call the attention of the county commissioners to the facts in the particular case; but the court can not order repayment of taxes in such a proceeding: *Hagerty v. State, ex rel.*, 14 O. C. C. 95, 7 O. C. D. 88 (reversing *State, ex rel., v. Hagerty*, 3 O. N. P. 246, 4 O. D. (N.P.) 283, in which the court had required the repayment of such taxes).

Where a taxpayer, under a belief, justified by the circumstances, that there is a legal charge against his property upon the tax duplicate in the hands of the treasurer, pays the amount thereof to such treasurer, when, in fact, no such charge appeared on the duplicate, and the payer was under no legal or moral obligation to pay the same, he may recover it back as a payment made under mistake of fact: *Woolley v. Staley*, 39 O. S. 354.

Under sections 2589 and 2590, G. C., refunds may be allowed by the county commissioners for taxes paid by mistake, such as the auditor is permitted to correct under the statutes. Such refunds, however, are limited to taxes erroneously collected in the five years next prior to the discovery thereof by the auditor. Taxes paid more than five years prior to such discovery thereof may not be refunded by authority of these statutes. A. G. R. 1913, p. 1213.

Limitation on refund of taxes or assessments.

SEC. 2590. At the next semi-annual settlement with the auditor of state after the refunding of such taxes, the county auditor shall deduct from the amount of taxes due the state at such settlement the amount of such taxes that have been paid into the state treasury. No taxes or assessments shall be so refunded except as have been so erroneously charged or collected in the five years next prior to the discovery thereof by the auditor. No assessment shall be returned, except from the fund or funds created in whole or in part by the erroneous assessments. (R. S. Sec. 1038.)

Deductions from valuations for injured or destroyed property.

SEC. 2591. Whenever, after the second Monday of April, and before the first day of October, in any year, it is made to appear to the county auditor, by the oath of the owner, or one of the owners, of a building or structure, land, orchard, timber, ornamental trees or groves, or tangible personal property, or by the affidavit of two disinterested persons, residents of the township, city or village in which the same is or was situated, that such building, structure, land, orchard, timber, ornamental trees or groves, or tangible personal property is listed for taxation for the current year, and has been destroyed or injured by fire, flood, tornado, or otherwise, after the first Monday of April of the current year, he shall investigate the matter, and deduct from the valuation of the property of the owner of such destroyed property, on the tax list for the current year, an amount which, in his judgment, fairly represents the extent of the injury or destruction; provided, however, that no such deduction shall be made in the case of an injury to, or destruction of a building, structure, land, orchard, timber, ornamental trees or groves, resulting in damage of less than one hundred dollars, nor shall any deduction be made for or on account of any damage or loss which is covered by insurance, nor on account of any sheep killed by dogs. The county auditor shall certify the deductions made by him under the provisions of this section to the county treasurer, who shall correct the tax list and duplicate in accordance therewith. (106 v. 263, Sec. 63.)

This section is held to be constitutional in *State, ex rel., v. Wright*, 8 O. C. C. (N.S.) 366, 18 O. C. D. 697.

Exemption laws having been recognized in Ohio ever since the adoption of the present constitution, and long before, it has manifestly been the policy of the state to allow certain property to be exempted from taxation; and this section, relating to deductions from the duplicate for destroyed or injured property, must therefore be upheld as valid and reasonable, notwithstanding the constitutional provision as to the taxing of all property by a uniform rule according to its true value in money: *State, ex rel., v. Wright*, 8 O. C. C. (N.S.) 366, 18 O. C. D. 697.

Under section 2591, General Code, such reduction may be made when a building has been depreciated in value by the act of the owner himself, between the aforesaid dates. *A. G. R. 1911-1912*, p. 625.

Record of additions and deductions.

SEC. 2592. The county auditor shall keep a book of "additions and deductions," in which he shall enter all corrections of the duplicate made after delivery thereof to the treasurer, which either increase or diminish the amount of a tax or assessment, as stated in the duplicate. In addition to the marginal corrections provided for in section twenty-five hundred and eighty-eight, he shall in each case give to the treasurer a certificate of the correction. (R. S. Sec. 1039.)

For purposes of taxation, the owner is the person in whom the legal title is vested: *Lewis v. State, ex rel.*, 59 O. S. 37 [affirming *State, ex rel., v. Lewis*, 15 O. C. C. 279, 8 O. C. D. 276].

Charge of omitted land taxes.

SEC. 2593. When the county auditor is satisfied that lots or lands on the tax list or duplicate have not been charged with either the county, township, village, city, or school district tax, he shall charge against it all such omitted tax as far back as the last appraisalment of real estate, unless in the meantime such lands or lots have changed ownership, in which case only the taxes chargeable since the last change of ownership shall be so charged. (R. S. Sec. 1040.)

Omitted taxes can not be charged any farther than to the last decennial appraisalment; and if in the meanwhile such property has changed hands, omitted taxes can be added only back to the time of such change: *Building Co. v. Brooks*, 9 O. C. C. 151, 6 O. C. D. 280.

"Change of ownership" within the meaning of this section means change of ownership by a conveyance for a valuable consideration: *Shields v. Gibson*, 1 O. C. C. (N.S.) 532, 14 O. C. D. 673 [affirmed, without report, *Shields v. Gibson*, 70 O. S. 422].

Change of ownership by lease or by descent is not a change of ownership within the meaning of this section, and does not prevent the state from charging against real property taxes thereon, which had been omitted: *Scott v. Raine*, 11 Dec. Rep. 171, 25 Bull. 154.

In case too low a valuation is put upon property by mistake, the auditor can not add to the duplicate the accumulated deficiency any taxes back to the last decennial appraisalment: *Draude v. Staley*, 8 Dec. Rep. 265, 6 Bull. 773.

Errors to be corrected; deductions.

SEC. 5571. A county auditor, from time to time, shall correct any errors which he may discover in the name of the owner, in the valuation, description, or quantity of any tract or lot contained in the list of real property in his county; but he shall not make any deductions from the valuation of any tract or lot of real property, except such as have been ordered, either by the state board or by the county board of equalization, or upon the written order of the auditor of state. Such written order shall only be made upon a statement of facts submitted to the auditor of state in writing. (R. S. Sec. 2800.)

The error which may be corrected under this section may be in the name of the person charged for taxation, in the description of the property, or in the amount of the tax: *State ex rel. v. Commissioners*, 31 O. S. 271. (Note however provisions of Sec. 2588 G. C.)

If the board of equalization reduces the valuation of land beyond their authority, and the county auditor transfers such land at such reduced valuation to the new tax duplicate, the error thus committed is a clerical error which it is his duty to correct: *State ex rel. v. Raine*, 47 O. S. 447.

Duty of auditor discovering omission.

SEC. 5573. On careful examination of the returns of an assessor, if the county auditor discovers that any tract of land or any lot or part of either, has been omitted, he shall add it to the list of real property, with the name of the owner, and forthwith notify the proper assessor of such omission. Such assessor shall forthwith ascertain and return the value of such tract or lot, or part thereof, and in case of his inability or neglect, the auditor may ascertain the value thereof and place it opposite such property. (R. S. Sec. 2802.)

Restoring lands omitted from duplicate and assessing taxes thereon.

SEC. 5574. When a county auditor discovers or has his attention called to the fact, that an assessor in any previous year had omitted to return, or, in any year omits to return lands, town lots, or improvements, structures or fixtures thereon, subject to taxation, situated within the county; or if such property has escaped taxation by reason of an error of the auditor, he shall ascertain the value thereof for taxation, as near as may be, and enter said lands, town lots, or improvements upon the duplicate of the county, then in the hands of the county treasurer, and add to the taxes of the current year the simple taxes of each and every preceding year in which the property has escaped taxation, as far back as the next preceding appraisalment and equalization of real estate in his county, unless in the meantime the property has changed ownership, in which case only the taxes chargeable since the last change of ownership shall be added; or the owner thereof, if he desires, may pay the amount of such taxes into the county treasury, on the order of the auditor. (R. S. Sec. 2803.)

A county auditor has power to fix the valuation of any property which has been omitted from the tax duplicate: *Deshler v. Sims*, 2 O. N. P. (N.S.) 385, 14 O. D. (N.P.) 532.

This section refers to property which has been omitted from taxation entirely: *Draude v. Staley*, 8 Dec. Rep. 265, 6 Bull. 773.

This section applies only to real property; and the auditor cannot under this section assess and enter upon the duplicate for taxation against any person minerals in situ unless the ownership of such minerals has been severed from that of the land and conveyed in fee: *Jones v. Wood*, 9 O. C. C. 560, 6 O. C. D. 538 [reversing *Jones v. Wood*, 1 O. N. P. 155, 2 O. D. (N.P.) 75; affirmed, without report, *Wood v. Jones*, 54 O. S. 627].

The purpose of the provision as to the change of ownership of real estate, found in this section, is to protect a bona fide purchaser, who might rely on the tax duplicate as it appeared at the time of his purchase: *Shields v. Gibson*, 1 O. C. C. (N.S.) 532, 14 O. C. D. 673 [affirmed, without report, *Shields v. Gibson*, 70 O. S. 422].

A devisee of land has parted with nothing upon the faith of the record, but has become the owner by devise, subject to the payment of the debts of the testator. There is, therefore, no such change of ownership as will prevent a correction of errors in the tax duplicate by the county auditor, and omitted taxes based upon such corrections become a specific lien upon the real estate so devised: *Shields v. Gibson*, 1 O. C. C. (N.S.) 532, 14 O. C. D. 673 [affirmed, without report, *Shields v. Gibson*, 70 O. S. 422].

The purpose of this statute is to put such property upon the duplicate at any time while the duplicate is in the hands of the treasurer for collection of the taxes of that year, without reference to the question whether the term "current year" means the year from April to April, or whether it means the year according to the ordinary computation of time: *Yost v. Brewing Co.*, 20 O. C. C. 26, 10 O. C. D. 693 [affirmed, without report, *Brewing Co. v. Yost*, 63 O. S. 563].

In the interpretation of this section, the expression "current year" should be construed to mean the current tax year, and not the current calendar year: *Railway v. Treasurer*, 78 O. S. 227.

Where omitted real property subject to taxation, was on July 31, 1901, entered by the county auditor on the duplicate carrying the taxes of 1900, which was the duplicate then in the hands of the county treasurer, it thereupon became the duty of the auditor, under this section, to add to the taxes so by him charged thereon against said property for the year 1900, the simple taxes of each and every preceding year in which such property had escaped taxation, back to and including the year 1891: *Railway v. Treasurer*, 78 O. S. 227.

This section authorizes the auditor to add simple taxes of each and every preceding year back to the next preceding decennial appraisalment and equalization of real property in which nonexempt property has escaped taxation, if in the meantime the property has not changed ownership: *Watterson v. Halliday*, 2 O. N. P. (N.S.) 693, 15 O. D. (N.P.) 271.

A county auditor may make corrections of the duplicate upon discovery of errors, and to this end he may receive evidence, even parol evidence: *Deshler v. Sims*, 2 O. N. P. (N.S.) 385, 14 O. D. (N.P.) 532.

Upon the auditor's failure to make a correction in the duplicate, a court may ascertain the facts from evidence and order the correction made: *Deshler v. Sims*, 2 O. N. P. (N.S.) 385, 14 O. D. (N.P.) 532.

Where property has been correctly valued upon the duplicate, but under a wrong description as to the amount of frontage, and the auditor attempts to correct the duplicate by adding

to the frontage and increasing the valuation accordingly, a court will enjoin the increase in the valuation: *Deshler v. Sims*, 2 O. N. P. (N.S.) 385, 14 O. D. (N.P.) 532.

Assessing improvements and betterments.

SEC. 5576. Such assessor, if he ascertains that, at the last quadrennial period or annual return, a mistake was made in the value of an improvement as betterment of real property, or that the true value thereof was omitted, shall return the correct value, having first given notice to the owner or agent thereof, of his intention so to do. Such addition shall be a proper subject for the determination of the next annual board of equalization upon the petition of the owner or agent of the property when filed for that purpose. (R. S. Sec. 2753.)

If by mistake a new building has been erroneously placed upon the wrong land, the auditor may correct such mistake, and place such increased value upon the proper land: *Shields v. Gibson*, 1 O. C. C. (N.S.) 532, 14 O. C. D. 673 [affirmed, without report, *Shields v. Gibson*, 70 O. S. 422].

If by mistake of the county auditor, a certain amount is added as the valuation of a new building to what is supposed to be the valuation of the land, whereas such valuation is not the valuation of the land alone but is in fact the valuation of the land and such new building, this is a clerical error which the auditor must correct; and the property owner is also entitled to have refunded to him the amount of taxes which he has paid by reason of such erroneous addition to the valuation of his property: *State, ex rel., v. Lewis*, 15 O. C. C. 279, 8 O. C. D. 276.

Cited: *Insurance Co. v. Hard*, 8 O. N. P. 36, 10 O. D. (N.P.) 469.

Collection of taxes on the foregoing.

SEC. 5577. Additions made by such assessor in conformity to the provisions of the next two preceding sections shall be listed upon the grand duplicate of the county and placed in the hands of the county treasurer for collection, subject to such modification, if any, as may be made by the next annual board of equalization. (R. S. Sec. 2753.)

Omitted taxes may be placed upon the current duplicate: *Wade v. Kimberley*, 5 O. C. C. 33, O. C. D. 18.

Since the addition made to the valuation of real property by the assessors is not subject to review by the courts in the first instance, but by a board, notice to the property owner is not necessary: *Glenn v. Raine*, 4 O. D. (N.P.) 517 [affirmed, without report, *Glenn v. Raine*, 55 O. S. 682].

Destroyed property.

SEC. 5578. This section was repealed 103 v. 786. For similar section see Section 2591, 106 v. 263, § 63.

CHAPTER THIRTEEN.

ASSESSING REAL ESTATE.

SECTION

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SECTION

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When reassessment of real property shall be made; duties of county auditor; who may petition for reassessment; appeal to board of revision; appeal to tax commission.

SEC. 5548. Each county auditor shall, annually, when so directed by the tax commission of Ohio, or when in his opinion it is advisable to reassess the real property, or any class thereof, in any district or part thereof, within his county, make and deliver to the assessor of such district an abstract from the books of his office, containing such description of such real property therein, together with such plat books and such lists of transfers of title to land made therein during the next preceding year as may be deemed necessary to enable the assessor to perform the duties imposed upon him by law in listing and valuing such property for taxation. Such abstracts, plat books and lists of transfers of title to land shall be in such form and detail as the tax commission of Ohio may prescribe. The board of county commissioners of the county, the board of township trustees of a township, the board of education of a school district, the council of a municipal corporation, or twenty-five taxpayers, owners of real property, in a district, may file with the county auditor a petition asking for a reassessment of the real property or a class thereof, in any township, school district or municipal corporation or part thereof. If the county auditor fails or refuses, for thirty days, to order such reassessment, the petitioners may, within thirty days thereafter, take an appeal to the county board of revision; provided, if such board is not in session at the time of taking such appeal, the same may be taken direct to the tax commission of Ohio. The county board of revision shall forthwith hear such appeal when filed with it, and may order a reassessment of such property, or dismiss such appeal, and certify its action to the county auditor. If the board orders a reassessment the county auditor shall proceed to have such assessment made in the manner provided herein. An appeal from the decision of the county board of revision on such appeal, may be taken to the tax commission of Ohio within thirty days after the decision of such board, by the petitioners or the county auditor. Such appeal shall be taken in the manner provided by Section 53 of this act. "The tax commission of Ohio shall hear all such appeals and make such orders as it deems proper thereon." (106 v. 260, Sec. 55. W. L. 50-51.)

For provisions relating to power of the tax commission to order a reassessment of real property and prescribing how reassessment shall be made when so ordered, see Sections 5624-4 and 5624-5 G. C. (106 v. 267, Sec. 79, 80.)

It will be noted that the first sentence of this section does not specifically require assessment or reassessment of real property. The force of this provision is, however, to require the auditor to make and deliver to assessors abstracts, lists of transfers and plat books necessary to enable the assessor to perform the duties imposed upon him by law, when a reassessment is authorized to be made.—A. G. R. 1916.

Under the Parrett-Whittemore act (106 v. 246) the appraisal or assessment of real property is limited to the control of the state tax commission and the reassessment thereof to the control of the tax commission, the county auditor and such officers and boards as are mentioned in section 5548 G. C. and an annual appraisal of real estate is not in any wise required unless so ordered by the tax commission of Ohio.—A. G. R. 1916.

The county auditor as the chief assessing officer of his county, can always direct and if necessary order a reassessment of real property under the conditions prescribed in section 5548

G. C., and assessors and assistant assessors are at all times under his direction and subject to his orders. — A. G. R. 1916.

Where a reassessment of real property is ordered by the tax commission, the discretion to determine whether said assessment shall be made by the assessor of the district in which the property is located or by an assistant assessor or assistant assessors, appointed by the county auditor, is vested in the county auditor, as the chief supervising, assessing officer of the county, and the state tax commission may not interfere with the exercise of this discretion. — A. G. R. 1916.

County commissioners to have maps made.

SEC. 5549. If, in the opinion of the county commissioners, it is necessary to the proper appraisal of the real estate of such county, on or before their June session, one thousand nine hundred and thirteen, and every fourth year thereafter, they may advertise for four consecutive weeks in one or more newspapers of general circulation in the county, for sealed proposals to construct the necessary maps and plats to enable the assessors in the county, or any district thereof, to correctly reappraise all real estate. The maps and plats shall be made under the supervision of the county auditor, and such advertisement shall particularly specify the extent and character of the work to be done. Each bid shall be accompanied by a good and sufficient bond of not less than one thousand dollars conditioned that said bidder will not fail or refuse to enter into contract in accordance with the advertised proposals, in case his bid is accepted. The commissioners shall open the bids on the day named in the advertisement, and, within three days thereafter, award the contract to the lowest and best bidder, if, in their opinion, it is to the interest of the county so to do, or they may reject any and all bids. (R. S. Sec. 2789.)

Bidder to give bond; payment, etc.

SEC. 5550. If the contract is awarded, the bidder to whom it is awarded, shall forthwith give a good and sufficient bond, with two or more sureties, in an amount of not less than two thousand dollars, nor more than ten thousand dollars, as required by the county commissioners, conditioned for the prompt, faithful, accurate performance of the work to be done. On completion of any city, village, township, or district, the work shall be paid for out of the county treasury, on the warrant of the county auditor, after it has been duly accepted and approved by the county commissioners. No bill shall be allowed until the auditor and commissioners are satisfied that the labor has been performed in accordance with the contract on file with the county auditor. In counties or districts having no map, the commissioners shall furnish it under the provisions of this chapter. (R. S. Sec. 2789.)

Tax maps of sub-divisions, etc.

SEC. 5551. The board of county commissioners may appoint the county surveyor, who shall employ such number of assistants as are necessary, not exceeding four, to provide for making, correcting, and keeping up to date a complete set of tax maps of the county. Such maps shall show all original lots and parcels of land, and all divisions, subdivisions and allotments thereof, with the name of the owner of each original lot or parcel and of each division, subdivision or lot, all new divisions, subdivisions or allotments made in the county, all transfers of property showing the lot or parcel of land transferred, the name of the grantee, and the date of the transfer, so that such maps shall furnish the auditor, for entering on the tax duplicate, a correct and proper description of each lot or parcel of land offered for transfer. Such maps shall be for the use of the board of equalization and the auditor, and be kept in the office of the county auditor. (R. S. Sec. 2789a.)

Where county commissioners appoint the county surveyor as tax map draughtsman under section 5551, G. C., and provide him no assistant as such, the county surveyor is not authorized to detail an assistant appointed under section 2788, G. C., or 7181, G. C., to do any of the tax map work. A. G. R. 1915, p. 2078.

Under Section 5551, General Code, the county commissioners are authorized to appoint the county surveyor to make, correct and keep up to date, a set of maps of the county. When the surveyor refuses to act in accordance with such appointment, the only alternative granted by the statutes is the method provided by Section 5549, General Code, for sealed proposals upon advertisement and bids, for the construction of the necessary maps during quadrennial appraisal years. A. G. R. 1912, p. 1485.

Draughtsman and assistants; compensation, how paid.

SEC. 5552. The board of county commissioners shall fix the salary of the draughtsman at not to exceed two thousand dollars per year. They shall likewise fix the number of assistants not to exceed four, and fix the salary of such assistants at not to exceed fifteen hundred dollars per year. The salaries of the draughtsman and assistants shall be paid out of the county treasury in the manner as the salary of other county officers are paid. (R. S. Sec. 2789b.)

Duties of district assessor.

SEC. 5553. An assessor, from the maps and descriptions furnished him by the county auditor and other sources of information, shall make a correct and pertinent description of each tract and lot of real property in his district. When he deems it necessary to obtain an accurate description of any separate tract or lot in his district, he may require the owner or occupier thereof to furnish it, with any title papers he has in his possession. If such owner or occupier, upon demand, neglects or refuses to so furnish a satisfactory description of such parcel of real property, the assessor may employ a competent surveyor to make a description of the boundaries and location thereof, and a statement of the quantity of land therein, and the expense of such survey shall be returned by such assessor to the auditor of the county, who shall add it to the tax assessed upon such real property, and it shall be collected by the treasurer of the county with such tax, and when collected, shall be paid, on demand, to the person to whom it is due. (R. S. Sec. 2790.)

For the history of earlier legislation upon this subject, see *Lessee of Buckley v. Osburn*, 8 O. 181.

Description and value of real estate.

SEC. 5554. The assessor, in all cases, from actual view, and from the best sources of information within his reach, shall determine, as near as practicable, the true value of each separate tract and lot of real property in his district, according to the rules prescribed by this chapter for valuing real property. He shall note in his plat-book, separately, the value of all dwelling houses, mills, and other buildings, which exceed one hundred dollars in value, on any tract or plat of land not incorporated, or on any land or lot of land included in a municipal corporation, which shall be carried out as a part of the value of such tract. He shall also enter therein the number of acres of arable or plow land, meadow and pasture land, and wood and uncultivated land, in each tract, as near as possible. (R. S. Sec. 2790.)

Cited: *Kendrick v. Farquhar*, 8 O. 189; *In re O'Brien*, 2 O. N. P. (N. S.) 421, 14 O. D. (N. P.) 319; *Barney Manufacturing Co. v. Commissioners*, 11 Dec. Rep. 790, 27 Bull. 366.

The provision of this section which requires a separate valuation of buildings and of land does not apply to assessments which are levied for local improvements: *Findlay v. Frey*, 51 O. S. 390 [reversing *Frey v. Findlay*, 7 O. C. C. 311, 4 O. D. 611.]

Inasmuch as section 5554, G. C., provides that the assessor in all cases *from actual view*, and from the best sources of information within his reach, shall determine as near as practicable the true value of each separate tract and lot of real property within his district, according to the rules prescribed by law for valuing real property, the county auditor is without authority to direct the assessors to fix "unit" or "tentative" values of real property and he may not himself or through his deputies or assistants fix such values. — A. G. R. 1916.

Mortgages; copy furnished owner.

SEC. 5555. The assessor shall ascertain from the owner or agent, the amount of the mortgage indebtedness upon each tract and lot in his district, and report the aggregate amount to the county auditor. Before he makes his returns to the county auditor, he shall deliver to the owner or agent of any tract or lot in his district, by mail or otherwise, if known, and a resident of the district, a true and certified copy of the valuation of each tract or lot, also of any building or buildings thereon, so valued by him. The blanks necessary for the purposes of this and the next two preceding sections shall be furnished by the county auditor, and paid for by the county commissioners out of the county treasury. (R. S. Sec. 2790.)

Assessors to have certain sections platted, etc., and plat recorded.

SEC. 5556. When an original survey, section, tract, or lot has become divided into such small parcels or fractions, as to render the description of the several parts thereof indefinite and doubtful, the assessors of real property in their several districts, when appraising any such survey and section, tract, or lot, or part thereof, so divided, shall cause the said section, or such parts thereof as may be necessary, to be accurately platted and laid out into such subdivisions as the different titles to the land therein may require, and number the said fractions or subdivisions as fractions or subdivisions of said section, tract, or lot or part thereof, so such parts thereof as may be subdivided, and deliver the plat so numbered to the recorder of the county, who shall accurately record it. From and after such record has been made, the numbers so given to said subdivisions or fractions shall be a sufficient description of the land so platted, numbered, and recorded, for all purposes of taxation and conveyancing. (R. S. Sec. 2791.)

This provision applies to land without the limits of a municipal corporation, as well as to land within such limits: *Mitchell & Watson v. Treasurer*, 25 O. S. 143.

Owner of land to produce to county auditor survey, etc., in certain cases.

SEC. 5557. When the assessor has neglected to plat and number such divisions, or the survey, section, tract, lot, or part thereof, is subdivided after the assessment and appraisal thereof, and in the opinion of the auditor of the county it is required to be platted and numbered for the purpose of a pertinent description thereof upon his duplicate, the auditor may require the owner or owners, occupier or occupiers, of such section, tract, lot, or part thereof, to produce to him at his office the title papers and surveys of the several subdivisions thereof, as well as of the survey, section, tract, lot, or part thereof, subdivided, on a day certain, not longer than thirty, nor less than ten days from the date of such notice. (R. S. Sec. 5791.)

County auditor may require owner to make survey, etc.

SEC. 5558. If the owner or owners, occupier or occupiers, of a survey, section, tract, lot, or part thereof, so subdivided, fails to appear when so required, and produce the title papers, or so producing them, the auditor, without a survey, can not plat and number said subdivisions, he may require such owner or owners, occupier or occupiers, to cause such subdivisions to be surveyed, platted and numbered within twenty days, and said survey and plat delivered to the recorder of said county for record. If such survey and plat is not made and delivered to the recorder within the time required, or the owner or owners, occupier or occupiers, or any of them, have not appeared when so required, the auditor may cause the subdivision or subdivisions of such survey, section, tract, lot, or part thereof, to be surveyed, platted, and numbered by the county surveyor and recorded by the county recorder. The expense of the survey and record so made by the order of the county auditor shall be reported to him by the surveyor and recorder, and by said auditor added to the tax on such subdivisions in proportion to the quantity of land in each, which shall be collected as the other taxes against them, and when collected paid over to the parties entitled thereto on the warrant of the auditor. (R. S. Sec. 2791.)

Plat to be recorded, etc.

SEC. 5559. When the title papers are produced to the auditor, he may plat, allot, and number said subdivisions, if practicable. The plat so made by the auditor shall be recorded upon the records of deeds of the county. After it has been so platted and numbered by the auditor, or by the surveyor, it shall be sufficient for all purposes of taxation to enter such subdivisions upon the duplicate by the numbers thereof, as provided by law for separate parcels of land, which shall be a pertinent and sufficient description thereof. (R. S. Sec. 2791.)

Tracts to be valued separately; rules therefor.

SEC. 5560. Each separate parcel of real property shall be valued at its true value in money, excluding the value of the crops growing thereon. The price for which such real property would sell at auction, or at forced sale, shall not be taken as the criterion of the true value, and where the fee of the soil of a tract, parcel or lot of land, is in any person natural or artificial, and the right to minerals therein in another, it shall be valued and listed agreeably to such ownership in separate entries, specifying the interests listed, and be taxed to the parties owning different interests, respectively. (R. S. Sec. 2792.)

The constitutional and statutory provisions on the subject require each parcel of real property to be valued at its true value in money: *McCurdy v. Prugh*, 59 O. S. 465; *State, ex rel., v. Lewis*, 64 O. S. 216.

If an estate has been granted in a part of a building which amounts to an interest in real property, the question whether the lessee is to pay taxes upon his interest separate from that of the lessor depends upon the terms of the lease: *Cincinnati College v. Yeatman*, 30 O. S. 276.

The term "right to minerals" means a title, which in legal effect severs such minerals from the soil: *Jones v. Wood*, 1 O. N. P. 155, 2 O. D. (N. P.) 75.

Petroleum and natural gas are minerals within the meaning of this section: *Jones v. Wood*, 1 O. N. P. 155, 2 O. D. (N. P.) 75.

A license to dig and mine minerals in consideration of pay therefor and a certain percentage of the minerals to the owner of the fee, does not convey the minerals in fee to the party to whom such license is issued; and his interest is, accordingly, not to be taxed separately from the interest of the owner: *Jones v. Wood*, 9 O. C. C. 560, 6 O. C. D. 538 [affirmed, without report, *Wood v. Jones*, 54 O. S. 627.]

A written agreement between the vendor and vendee of coal, with reference to the apportionment of the valuation upon the tax list, is not conclusive upon the auditor: *Dye v. State*, 73 O. S. 281.

Upon the question of the taxation of coal, see, also, *Edwards v. McClurg*, 39 O. S. 41.

Deductions by assessor.

SEC. 5561. The assessor shall deduct from the value of such tracts of land, as provided in the next preceding section, lying outside of municipal corporations, the

amount of land occupied and used by a canal or used as a public highway, at the time of such assessment, and if he fails to do so, the county auditor may make such deductions. (R. S. Sec. 2792.)

For canals, see appendix, § 13997, et seq.

Assessment of mineral lands; increase of value reported; decrease of value reported; manner of listing for taxation.

SEC. 5562. At the time of making the lists of personal property, the assessor shall make a list of petroleum, oil, and natural gas wells, coal and ore mines, limestone quarries, fire-clay pits, or works of any kind designed for the production of minerals of any kind, which have been begun or constructed since the last preceding quadrennial appraisement. If, by reason of the discovery of such minerals, the construction of such works, the commencement of such operations, or the development of such minerals, or otherwise, within the year, the value of the lands containing or producing such minerals, or any of them, or the value of any right to such minerals, listed and taxed separately from such lands, shall increase in value to the amount of one hundred dollars or more, the assessor shall increase the assessment of such land or right to the minerals therein to its true value in money in the name of the owner thereof. If the assessor finds that rights to minerals contained or produced in or upon any lot or parcel of land has been previously created and not separately assessed for taxation, he shall report the same, together with his aggregate valuation of the lot or parcel and the right or rights to minerals therein, to the county auditor, who shall apportion such aggregate valuation as provided in Section 5563 of the General Code. If the value of any lot or parcel of land containing or producing petroleum, oil, natural gas, coal, ore, limestone, fire-clay, or other minerals, or of any right to the minerals therein, shall decrease within the year, by reason of the exhaustion of any such minerals or by the failure to find or develop such minerals, the assessor shall determine, as nearly as may be practicable, how much less valuable such lot or parcel is in consequence of such exhaustion or failure to find or develop, in case the fee of the soil and the right to the minerals is owned and assessed for taxation against the same person, and make return thereof to the county auditor; where the title to the fee of the soil is in one or more persons, and the right to the minerals therein, or any of them, is in another person, the assessor shall determine, as nearly as practicable, how much less valuable such right to the minerals therein is by reason of such exhaustion or failure to find or develop, and make return thereof to the county auditor. If the county auditor finds that the value of any such lot or parcel of land or any such right to the minerals therein has decreased to the amount of one hundred dollars or more, by reason of such exhaustion or of such failure to find or develop, he may reduce the valuation of such lands or of such rights to the minerals therein, as the case may be, so as to place such valuation at its true value in money. (As amended, 102 v. 89.)

The power to value mineral rights, rests by section 5562, General Code, as amended 102 O. L. 89, in the personal property assessor who shall value such rights annually, and the valuation so fixed shall be final for the year.

When, therefore, after valuation by the assessor and before the time for payment of taxes, knowledge is acquired of the lessened value of such mineral rights, neither the county auditor nor the board of equalization may reduce the valuation so fixed.

The same rule applies even though by the terms of lease or contract, the ownership of the mineral rights be automatically relinquished by the discovery of the absence of minerals, and the mineral rights will nevertheless remain on the tax list. A. G. R. 1911-1912, p. 689.

Apportionment of assessed valuation by county auditors.

SEC. 5563. Where the fee of the soil and the minerals, or part of either, of a lot or parcel of land has been previously assessed for taxation in the name of the same person, but the title to the fee of the soil is in one or more persons, and the title to such minerals, or any of them, or any right to the minerals therein, or any of them, is in another person, the county auditor shall ascertain from the returns made to him by the assessor as provided in Section 5562 of the General Code, or from any other source of information at his command, the aggregate value of such lot or parcel of land and the minerals or rights thereto, and shall equitably divide and apportion such aggregate valuation between the owner or owners of the fee of the soil and the owner or owners of such minerals and rights thereto so held separately from the fee of the soil, according to the relative value of the interests so held by such owners of the fee of the soil and such minerals or rights thereto, respectively. (As amended, 102 v. 89.)

Examination of buildings.

SEC. 5564. For the purpose of enabling the assessor to determine the value of buildings and other improvements, he shall enter, with the consent of the owner or occupant thereof, and fully examine all buildings and structures of every kind, which are by this title either liable to or exempt from taxation. (R. S. Sec. 2793.)

Plats presented to auditor for assessment.

SEC. 5568. When any person lays out a village or city, or any addition thereto, before the plat thereof is recorded, he shall present it to the county auditor, who shall cause the assessor of the proper locality to assess and return the true valuation of each lot or parcel of land described in such plat in like manner as new structures are valued. Thereupon such lots or parcels shall be entered on the tax list in lieu of the land included therein. In making such valuations, regard shall be had to the next preceding quadrennial valuation of real estate, so that the said lots shall, as near as practical, be equalized with adjacent lands and lots according to such quadrennial valuation. (R. S. Sec. 2797.)

This section applies to plats of land within the limits of the municipal corporation, as well as to land without such limits: *Mitchell v. Treasurer*, 25 O. S. 143.

Land which is embraced within the lines of streets is not to be listed for taxation: *Commissioners v. Albers*, 8 O. C. C. (N. S.) 558, 18 O. C. D. 830.

Upon revaluation, the assessor may fix the valuation upon the lots the aggregate of which exceeds the valuation placed upon the land before it was platted into lots: *Davis v. Commissioners*, 8 O. C. C. (N. S.) 502, 18 O. C. D. 817.

Contra: That the board of equalization or the assessor cannot impose a valuation upon the lots the aggregate of which will exceed the former valuation by the acre; at least if such former valuation was fair and reasonable: *Ransom v. Potter*, 22 O. C. C. 388, 12 O. C. D. 478.

Return of exempted real estate.

SEC. 5570. An assessor, at the time of making the assessment of real property subject to taxation, shall enter in a separate list pertinent descriptions of all burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, and public buildings and property used exclusively for any public purpose, with the lot or tract of land on which such house, institution or public building is situated, and which are exempt from taxation. He shall value such houses, buildings, property, and lots and tracts of land at their true value in money, in like manner as he is required to value other real property, designating in each case the township, city or village, and number of the school district, or the name or designation of the school, religious society, or institution to which each house, lot, or tract belongs. If such property is held and used for other public purposes, he shall state by whom or how it is held. (R. S. Sec. 2799.)

CHAPTER FOURTEEN.

CORPORATIONS GENERALLY.

SECTION

- 5404. Corporation returns.
- 5405. Valuation by county auditor.
- 5406. Apportionment.
- 5406. Duty of county auditor.

SECTION

- 5406-1. Property in more than one county.
Where and how listed.
- 5406-2. Entry of apportioned valuation.
- 5406-3. How location of property determined.

Corporation returns.

SEC. 5404. The president, secretary, and principal accounting officer of every incorporated company, except banking or other corporations whose taxation is specifically provided for, for whatever purpose they may have been created, whether incorporated by a law of this state or not, shall list for taxation, verified by the oath of the person so listing, all the personal property thereof, and all real estate necessary to the daily operations of the company, moneys and credits of such company or corporation within the state, at the true value in money. (R. S. Sec. 2744.)

For canals, see appendix, § 13997, et seq.

Express, telegraph and telephone companies expressly taken out of this section, see G. C. § 5449 (102 v. 224), et seq.

Also sleeping car companies, see G. C. § 5462 (102 v. 224), et seq.

Also freight lines and equipment companies, see G. C. § 5462 (102 v. 224), et seq.

This section includes all corporations except banking corporations unless some specific provision is made by statute for the taxation of corporations of that class, whether they are organized in Ohio or not: Telegraph Co. v. Poe, 61 Fed. 449, 8 O. F. D. 158.

That the necessary real property of an insurance company is to be regarded as personal property under this section, see Insurance Co. v. Bowland, 196 U. S. 611, 14 O. F. D. 543, 2 O. L. R. 515.

Securities which a foreign insurance company is required to deposit with the insurance commissioner, in order to be permitted to do business in this state, constitutes personal property of such corporation within this state, and, accordingly, are taxable: Sims v. Best, 1 O. C. C. (N.S.) 41, 15 O. C. D. 149; Insurance Co. v. Bowland, 196 U. S. 611, 14 O. F. D. 543, 2 O. L. R. 515; Assurance Co. v. Halliday, 110 Fed. 259, 13 O. F. D. 682; Assurance Co. v. Halliday, 126 Fed. 257, 61 C. C. A. 271, 14 O. F. D. 73, 1 O. L. R. 643; Assurance Co. v. Halliday, 127 Fed. 830, 14 O. F. D. 306.

An Ohio mutual insurance company, also doing business in other states, should, under this and the following sections, list for taxation in Ohio not only its property within the state, but also its assets, whether in the form of notes or cash balances in the hands of agents in other states. The fact that such company in order to do business in other states may be subjected to a franchise tax, or a tax for permission to do business in a state, does not constitute double taxation or relieve the company from taxation of such assets or personal property in Ohio: Ohio Farmers Ins. Co. v. Hard, 8 O. N. P. 36, 10 O. D. (N.P.) 469.

An insurance company must list for taxation its notes for unpaid balances on stock subscriptions: Insurance Co. v. LaRue, 22 O. S. 630.

Reinsurance is not in legal effect a debt, and, accordingly, cannot be deducted by an insurance company from its credits: Insurance Co. v. Cappellari, 38 O. S. 560.

The term "personal property" in this section includes bonds of municipal corporations, except such as are specifically exempt by the constitution and statutes of this state: Assurance Co. v. Halliday, 126 Fed. 257, 61 C. C. A. 271, 14 O. F. D. 73, 1 O. L. R. 643, Assurance Co. v. Halliday, 127 Fed. 830, 14 O. F. D. 306.

Chose in action, whether notes or book accounts, which belong to foreign corporations, which arise out of business done in this state, and which are kept in this state, are subject to taxation here: Hubbard v. Brush, 61 O. S. 252.

A franchise is not property, and, accordingly, cannot be taxed as property: Bank v. Hines, 3 O. S. 1.

Capital stock is property in which capital is invested for business, and a return of such property should be made by such corporation under this section: Scott v. Smith, 2 O. N. P. (N.S.) 617, 15 O. D. (N.P.) 590.

The capital of a corporation, in whatever form it may be invested, and the shares of stock owned by the stockholders, are distinct species of property: Bradley v. Bauder, 38 O. S. 28.

Sections 5404 and 5405, General Code, providing for the return to the county auditor, by corporations, of all personal and real property, are not exclusive provisions in the sense that they exclude such portions of chapter three of the title in the General Code, relating to taxation, as may be applicable to corporations.

A corporation, obliged to return all its personal property under 5404, General Code, which is engaged in the manufacturing business, must return, upon an average basis, so much of its property as is engaged in process of manufacture, in the manner specified in 5385 and 5386, General Code.

As to the articles manufactured by a corporation in this state and sent to a warehouse in another county to be stored, the rule is adhered to that the stock stored in the warehouse should be separately listed at the place where stored. A. G. R. 1912, p. 612.

Section 5404 of the General Code, in providing for the tax of credits existing in Ohio, belonging to non-resident corporations, does not violate Article XIII, Section 4 of the Constitution of Ohio, providing that the property of corporations shall be taxed the same as individuals, for the reason that the credits of non-resident private persons may also be taxed through resident agents.

Credits of a non-resident corporation may be taxed in Ohio, only when they are "localized" by being committed to the charge and management of an agent or other representative who is more than a mere custodian or collector and who has power to deal in a managerial capacity with the fund represented by the credit.

A corporation cannot have a legal residence apart from its domicile and it conducts business in states other than the state of its incorporation, only through agencies.

The "constituent acts," that is, those acts which are necessary to the organization and existence of the corporation itself or its final dissolution, must be performed within the limits of the sovereignty which creates the corporation. Its other business may be conducted in other jurisdictions through its officers acting as agents. The state in which such other business is done, therefore, may tax such credits as are "localized" therein, that is, such as are fully and completely controlled and managed therein, and if all of the business except the "constituent" acts are so managed and controlled therein, the property used in and the credits growing out of such business, may be taxed therein.

A state may also tax all debts due a non-resident corporation from resident debtors regardless of the place where the debt was contracted. A. G. R. 1912, p. 547.

On the authority, *Hubbard vs. Brush*, 61 O. S. 252, a foreign corporation having an agency in this state and a stock of goods and machinery located at such agency, is not entitled under the tax laws to deduct from the sum of all its legal claims arising from the sale of such goods and machinery in this state, the legal bona fide debts owing by such corporation regardless of whether such debts are related to the goods sold and the business done in the state of Ohio.

Such corporation may deduct from its credits, under the control and management of the Ohio agency, arising from the sale of goods and machinery in this state, its legal bona fide debts which are related to the business conducted in Ohio, but not those debts which are related merely to the goods owned by the corporation in Ohio.

Debts therefore, created by the corporation at its domicile in the general purchase of goods, part of which are consigned to the Ohio agency for sale, are not deductible.

Debts so created, however, solely for and on account of the goods to be sold in Ohio may be deducted. A. G. R. 1912, p. 608.

The statutes of Ohio are to be construed to effect that credits may be taxed only against residents of this state and against non-residents who actually loan and hold moneys loaned through an agent acting in this state.

The rule, however, is narrowed with reference to corporations under section 5404, General Code, which renders credits as well as other forms of personal property taxable to all corporations at the place in this state where the credits are held regardless of corporate residence. A. G. R. 1911-1912, p. 630.

Where a foreign corporation has its manufacturing establishments and principal managerial offices in other states, but maintains in Ohio a selling agency which manages the business of selling products of the corporation, keeping a stock of its goods on hand, directing the activities of traveling salesmen and other solicitors, and extending credit to customers, the credits arising from such business are taxable to the company in Ohio.

Under the above facts, and the goods received by the Ohio agency and held in stock by it not being charged to it by the home company, so that there is no relation of debtor and creditor existing on account of the delivery of such goods to the Ohio agency, the debts which the corporation may deduct from the claims and debts payable to the Ohio agency for the purpose of arriving at the amount of the taxable credits, are such debts as are attributable solely to the Ohio agency and its business, and those only; that is, the debts which may be deducted are those which are incurred by the Ohio agents themselves, or by the home office, for and on behalf of the Ohio agency, and with direct reference to the business of the agency. The company may not deduct all debts owing to it from Ohio debtors, as such, nor a proportional share of the entire indebtedness of the company, determined by the amount of sales of Ohio agents as computed with the total sales of the company everywhere. A. G. R. 1914, p. 1578.

Taxable Ohio municipal bonds deposited with the treasurer of state by foreign trust companies as security for the execution of trusts in this state, are subject to taxation. A. G. R. 1914, p. 1197.

The county auditor may require a corporation to fill out blanks containing questions relating to real estate, credits, moneys and values owned.

The power follows from the auditor's power in the correction of returns, to compel attendance and to require answers to all questions under penalty of the contempt procedure of the probate court. A. G. R. 1912, p. 545.

The tax commission has authority to prescribe the form of blanks for making returns of incorporated companies, and in the exercise thereof may lawfully include in the blank forms questions the answers to which would be of assistance to the district assessor in making such revision and correction of corporate returns as he is authorized by statute to make, including questions contained in district assessors' form No. 10. However, the officers of corporations are not required to answer all such questions on the blank forms, though answers may be compelled in separate proceedings to inquire into the correctness of such returns under sections 5399 to 5403, inclusive, G. C. Such information may be used by the district assessor in verifying and checking up the return of the corporation, but not directly as the basis of an assessment of the corporate property. A. G. R. 1915, p. 1056.

A corporation manufacturing a product in Ohio and shipping quantities of the same to local agents to be sold by them upon commission must return for taxation each stock of goods so held by such agent, in the taxing district wherein the same is so held, on the average basis as manufacturer's stock of finished products. The return must be made by the president, secretary or principal accounting officer of the corporation, and not by the local agent. A. G. R. 1915, p. 708.

Building and loan associations are not required to return any personal property to the county auditor, under section 5404, G. C. A. G. R. 1913, p. 1375.

Valuation by county auditor; apportionment.

SEC. 5405. Return shall be made to the several auditors of the respective counties where such property is situated, together with a statement of the amount thereof which is situated in each township, village, city, or taxing district therein. Upon receiving such returns, the auditor shall ascertain and determine the value of the property of such companies, and deduct from the aggregate sum so found of each, the value as assessed for such companies, after so deducting the value of all the real estate included in the return, shall be apportioned by the auditor to such cities, villages, townships, or taxing districts, pro rata, in proportion to the value of the real estate and fixed property included in the return, in each of such cities, villages, townships, or taxing districts. The auditor shall place such apportioned valuation on the tax duplicate and taxes shall be levied and collected thereon at the same rate and in the same manner that taxes are levied and collected on other personal property in such township, village, city or taxing district. (R. S. Sec. 2744.)

The value of personal property for the purpose of taxation, whether belonging to an individual or a corporation, should be based on its true value as property and not on its value as a unit or going concern and with reference to the use made of it by the owner and profit derived therefrom. Cedar Point Resort Company v. Nuhn, treasurer, 12 O. L. R. 449. (On appeal to the court of appeals, this judgment was affirmed. The Supreme Court overruled an application to have the court of appeals certify its records, and on a rehearing again overruled such application.)

The property of a private corporation not having or exercising any public franchise is not assessable for taxation as a going concern under section 5405 G. C. Long v. Paper Co., 90 O. S. 468.

Duty of county auditor.

SEC. 5406. The auditor of each county, on or before the first Monday of May, annually, shall furnish the president, secretary, principal accounting officer, or agent as provided in the next two preceding sections, the necessary blanks for the purpose of making such returns, but neglect or failure on the part of the county auditor to furnish such blanks shall not excuse such president, secretary, accountant, or agent, from making the returns within the time specified herein. If the county auditor to whom returns are made is of the opinion that false or incorrect valuations have been made, that the property of the corporation or association has not been listed at its full value, or that it has not been listed in the location where it properly belongs, or if no return has been made to the county auditor he must have the property valued and assessed. This section and the next preceding section shall not tax any stock or interest held by the state in a joint stock company. (R. S. Sec. 2744.)

Returns are subject to the revision of the county auditor: State, ex rel., v. Halliday, 61 O. S. 352.

This section confers on county auditors authority to revise and correct the tax returns of such corporations as must make their returns directly to him.

Insurance Company v. Hard, 59 Ohio State 248.

The authority thus conferred continues throughout the current year, or until the taxes on the property so returned have been paid, but does not extend to returns made for former years.

Insurance Company v. Hard, 59 Ohio State 248.

Section 5398 G. C. confers on the several county auditors of the state the same jurisdiction over the tax returns made by corporations, that it confers on them in respect to the returns made by natural persons.

Insurance Company v. Hard, 59 Ohio State 248.

Where and how property of an incorporated company, situated in more than one county, shall be listed.

SEC. 5406-1. If the property of an incorporated company is situated in more than one county, return shall be made to the county auditor of the county wherein the principal place of business of the company is located, or if the company has no principal place of business in this state, to the county auditor of any county wherein it transacts business or its property is situated. The county auditor to whom return is made shall certify the fact, together with the return and all information in his possession relating thereto, to the tax commission of Ohio, which shall ascertain and determine the aggregate value of the entire property of the company required to be listed in this state, and, from the aggregate sum so found, make the deductions provided in section fifty-four hundred and five of the General Code. The commission shall apportion the value of the property of such company, after making such deductions, among such counties in proportion to the value of the property

located in each, and certify its findings to the county auditors, who shall severally apportion the amount certified to their respective counties, to the cities, villages, townships and other taxing districts, therein, in the manner prescribed in section 5405 of the General Code. (106 v. 249, § 13.)

As used in the section 5406-1 of the Parrett-Whittemore Law (106 v. 246) the word entire can mean nothing more than that when the property of a corporation is located in more than one county the tax commission shall assess the whole property. It is used as meaning "all" rather than as meaning "as an entirety."—A. G. R. 1916.

As a matter of interpretation merely section 5406-1, G. C., must be regarded as simply an effort on the part of the General Assembly to provide the administrative machinery for doing in the state at large what has always been done in the county under section 5405, G. C.; that is giving to one assessing officer or tribunal the power to assess all the property of a given corporation, instead of having the property, subject to assessment by different officers and tribunals.—A. G. R. 1916.

Unit valuations as to corporations is not authorized by this section.—A. G. R. 1916.

Entry of apportioned valuation.

SEC. 5406-2. The county auditor shall enter the apportioned valuation provided for in the preceding section on the tax list and duplicate, separately entering the real estate belonging to the company at the assessed value thereof. (106 v. 249, § 14.)

How location of property determined.

SEC. 5406-3. In determining the location of property for the purpose of the two preceding sections, all moneys and credits used in or appertaining especially to a separate business transacted by an incorporated company at a particular place shall be deemed to be located at such place where the business is transacted, and moneys and credits not used in or appertaining especially to such separate business transacted at any particular place shall be deemed to be located at the principal place of business of such company. (106 v. 249, § 15.)

CHAPTER FIFTEEN.

EQUALIZATION AND REVIEW.

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Hearing of complaints.

SEC. 5597. It shall be the duty of the board of revision to hear complaints relating to the assessment of both real and personal property laid before it by the county auditor and it shall investigate all such complaints and may increase or decrease any valuation or correct any assessment complained of, or it may order a reassessment by the original assessing officer. At a hearing before the board, the assessing officer and the county auditor may appear to defend such assessments. (106 v. 257, § 44, W. L. § 14.)

Section 5597, G. C., makes it the duty of the county board of revision to hear the complaints laid before it by the county auditor and investigate the same, and it may increase or decrease any valuation or correct any assessment complained of, or it may order a reassessment by the original assessing officer. — A. G. R. 1916.

Investigation of listing, assessment and valuation.

SEC. 5598. The county board of revision shall have power to investigate all assessments on the tax list, with respect to the amount of property listed as well as with respect to the valuation at which the same is listed. The power of the board shall extend to all cases in which real or personal property has been assessed for taxation for the current year, but not to assessments, additions or corrections hereafter made by the tax commission of Ohio. (106 v. 258, § 45, W. L. § 18.)

Notice before increase of valuation.

SEC. 5599. The county board of revision shall not increase any valuation complained of, nor increase the listed amount of any taxable property complained of without giving reasonable notice to the person in whose name the property affected thereby is listed, and affording him an opportunity to be heard. Such notice shall be served in the manner prescribed herein and shall describe the real or personal property the tax value of which is to be acted upon, by the description thereof as carried on the tax list of the current year, and shall state the name in which it is listed. (106 v. 258, § 46, W. L. § 27.)

Before the county board of revision in the exercise of the powers conferred upon it by sections 5596 and 5598, G. C., in connection with the exercise of the powers conferred upon it and the discharge of the duty placed upon it by provisions of section 5597, G. C., can increase any valuation complained of, notice must be given as required by provision of section 5599, G. C. — A. G. R. 1916.

Under a former statute it was held that the requirements as to notice must be complied with strictly.

Britt v. Hagerty, 11 O. C. C. 115; 5 O. C. D. 64. (affirmed without report, *Hagerty v. Britt*, 56 Ohio State 790.)

See to the same effect, *Perkins v. Zumstein*, 40 O. C. C. 871; 20 C. D. 601. *Hayes v. Yost* 40 O. C. C. (N. S.) 455; 14 O. C. D. 18.

Notice is not necessary in the case of new structures; boards of equalization may review and increase the valuations of new structures as returned by assessors without notice to the owners. *Lewis v. State ex rel*, 69 Ohio State 473.

Service of notice.

SEC. 5600. The notice provided for in section 46 hereof shall be served by delivering a copy thereof to the person or persons interested, or by leaving a copy at the usual place of residence or business of such person or persons, or by sending the same by registered letter, mailed to the address of such person or persons. If no such place of residence or business is found in the county, then such copies shall be delivered or mailed to the agent in charge of such property. If no such agent is found in the county, such notice shall be served by advertisement thereof inserted once in a newspaper of general circulation in the county in which the property is situated. Notices to the respective persons interested in different properties may be united in one advertisement under the same general heading. Notices served in accordance with any of the above provisions shall be sufficient. (106 v. 272, §102.)

Valuation may be decreased upon written application under oath.

SEC. 5601. The county board of revision shall not decrease any valuation complained of nor reduce the listed amount of any taxable property complained of, unless the party affected thereby, or his agent, makes and files with the board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease or reduction should be made, and not without affording the county auditor an opportunity to be heard thereon. (106 v. 258, § 47, W. L. § 28.)

Valuations complained of may be decreased only upon the written application under oath of the party affected thereby, or his agent, as provided in this section.—A. G. R. 1916.

Action of board certified to auditor for correction of tax list.

SEC. 5602. The county board of revision shall certify its action to the county auditor, who shall correct the tax list and duplicate according to the deductions and additions ordered by the board in the manner provided by law for making corrections thereof. If the tax duplicate has been delivered to the county treasurer, the county auditor shall certify such corrections to him and he shall enter such corrections on his tax duplicate. (106 v. 258, § 48, W. L. § 29.)

Evidence shall be taken and preserved.

SEC. 5603. The county board of revision shall take full minutes of all evidence given before the board and may cause the same to be taken in shorthand and extended in typewritten form. The secretary of the board shall preserve in his office separate records of all minutes and documentary evidence offered on each complaint. (106 v. 258, § 49, W. L. § 30.)

Omissions and undervaluations shall be investigated and reported.

SEC. 5604. When the county board of revision discovers or has its attention called to the fact, that in the current year or in any year during the five years next preceding, subsequent to the year 1911, any taxable land, building, structure, improvement, minerals, mineral rights, personal property or other taxable property in the county, has escaped taxation or been listed for taxation at less than its true value in money, the board may investigate the same and report to the county auditor all facts and information in its possession relating to the same. The county auditor shall make such inquiries and corrections as he is authorized and required by law to make in other cases in which real or personal property has escaped taxation, or has been improperly listed or valued for taxation. (106 v. 258, § 50, W. L. § 65.)

Examination, revision and correction of all property statements and returns; omitted real estate.

SEC. 5605. On the second Monday of June, 1916, and annually, thereafter, the county auditor shall lay before the county board of revision the statements and returns of property received by him for the current year, and such board shall forthwith proceed to examine and revise the statements and returns of all property, both real and personal, to see that the valuations thereof are equal and uniform throughout the county, and that all property, and each and every class, kind or description thereof, is valued for taxation throughout the county at its full and true value in money. If the board finds any statement or return of personal property to be erroneous, either in the amount of property, moneys, credits, investments in bonds, stocks, joint stock companies or otherwise, listed in the name of any person, company, firm, partnership, association or corporation, or in the valuation of any item or items thereof, it shall correct such statement or return, by listing thereon any omitted property and giving to its, as well as to any property that has been listed therein but which has been incorrectly valued, the true value in

money thereof, and by omitting therefrom property improperly listed thereon. The county auditor shall add to any such statement or return, any dog omitted therefrom. If the board finds that any tract, lot or parcel of land or any buildings, structures or improvements thereon, or any minerals therein or rights thereto have been improperly listed either in the name of the owner, the description or quantity thereof, or have been incorrectly valued, or have been omitted and not valued, it shall make the necessary corrections and shall give to each such tract, lot or parcel of land, or any buildings, structures or improvements thereon or any minerals therein or rights thereto, incorrectly valued or omitted, the true value in money thereof. The board of revision shall not undertake the hearing of complaints or the exercise of any other power at its June session, until its powers and duties under this section have been exercised and discharged. The county auditor shall not make up his tax list and duplicate, as provided in section 56 of this act, nor advertise, as provided in section 58 of this act, until the board of revision has completed its work under this section and has returned to the auditor all the statements and returns laid before it with the revisions and corrections thereof, as made by it. (106 v. 259, § 51, W. L. § 9.)

Under the provisions of this section the county board of revision at its June session is limited to the values listed on the returns filed with it by the county auditor. — A. G. R. 1916

A county board of revision, in the performance of its duties under section 5605, G. C., at its June session in any year is limited in its consideration of valuations of real property to the statements and returns for such year as placed before it by the county auditor in compliance with said section, and said board may not increase or decrease valuations of real estate which has not been appraised during said year. — A. G. R. 1916.

Under a former statute it was held that errors made by assessors in under-valuing land through ignorance or mistake as to the character of the improvements thereon should be corrected by the board of equalization.

Humphreys v. Safe Deposit Co., 29 Ohio State 608.

A court of equity cannot interfere with the acts of a board of review or equalization upon question of evidence or on the weight of the evidence; but if such board acts without evidence, or arbitrarily or from mere caprice, a court of equity will grant relief; *Rawson Co. v. Schott*, 14 O. C. C. 94; 7 O. C. D. 256.

Additions to or deductions from the valuations of personal property returns for taxation, made by boards of equalization, should be upon satisfactory evidence or knowledge of the facts, and not arbitrarily without any evidence or knowledge of the facts to support the same.

Frantz v. Mueller, 35 Ohio State 397.

As a general rule, the decisions of officers and tribunals specially created and charged in the tax laws with the duty of valuing property for taxation, and equalizing such valuations, are final and conclusive.

Wagner v. Loomis, 37 Ohio State 571.

Notice by publication when work of equalization completed; hearing of complaints; certificate of assessment upon request.

SEC. 5606. When the board of revision has completed its work of equalization and has transmitted the statements and returns to him, the county auditor shall give notice, by advertisement in two newspapers, of opposite politics, published in and of general circulation throughout the county, that the tax statements and returns for the current year have been revised and the valuations completed and are open for public inspection in his office, and that complaints against any valuation or assessment, except the valuations fixed and assessments made by the tax commission of Ohio, will be heard by the county board of revision, stating in the notice the time and place of the meeting of such board. Such advertisements shall be inserted in a conspicuous place in each such newspaper and be published daily for ten days unless there be no daily newspaper published in and of general circulation throughout such county, in which event such advertisement shall be so published once each week for two weeks. The county auditor shall, upon request, furnish to any person a certificate setting forth the assessment and valuation of any tract, lot or parcel of real estate or any specific personal property, and mail the same, when requested to do so, upon receipt of sufficient postage. (106 v. 262, § 58, W. L. § 21.)

Annual printing and mailing list of changes in assessment of real estate.

SEC. 5607. On or before the 15th day of July, annually, the county auditor shall cause to be printed a list showing all changes made in the assessment of any tract, lot or parcel of real estate or improvement thereon or minerals or mineral rights therein and shall cause a copy of such list to be mailed to each owner whose assessment has been changed, if known, and if not, then to his agent, if known. (106 v. 262, § 59, W. L. § 22.)

Quadrennial printing and mailing of lists showing assessment of real estate.

SEC. 5608. On or before the first day of September, nineteen hundred and sixteen, and every fourth year thereafter, the county auditor shall cause to be printed separate lists showing the assessment of all real estate in each ward in municipal corporations

divided into wards, and in each township and municipal corporation not divided into wards, in his county. Such lists shall be in such form and shall contain in detail such information as the tax commission of Ohio may prescribe. The county auditor shall cause a copy thereof to be mailed to each owner of real estate in the ward, township or municipal corporation, if known, and if not known, then to his agent, if known. In such years the county auditor shall not print and mail the lists provided for in the next preceding section. (106 v. 262, § 60, W. L. § 23.)

When and where complaints may be filed.

SEC. 5609. Complaints against any valuation or assessment on the tax list for the current year may be filed with the county auditor before the meeting of the county board of revision on the first Monday of August or within thirty days thereafter if the board remains in session so long. Any taxpayer may file such complaint as to the valuation or assessment of his own or other's property, and the county commissioners, the prosecuting attorney, county treasurer or any board of township trustees, any board of education, mayor or council of any municipal corporation in the county shall have the right to file such complaint. The county auditor shall lay before the county board of revision all complaints filed with him. (106 v. 259, § 52, W. L. § 24.)

The jurisdiction of the county board of revision, at its August session, is determined by the filing of a complaint, and the complaint may be made as to any assessment on the tax list. — A. G. R. 1916.

Under the provisions of this section complaints may be filed with the county auditor as secretary of the county board of revision, against any valuation or assessment on the tax list as placed before said board of revision by the county auditor, at the August session of said board. — A. G. R. 1916.

At its August session the work of the county board of revision is confined to a review upon complaint of any valuation or assessment on the tax list for the current year, as returned to the county auditor by said board of revision after its work of equalization has been completed at its June session. — A. G. R. 1916.

Appeal from decision of the board; how taken.

SEC. 5610. An appeal from the decision of a county board of revision may be taken to the tax commission of Ohio, within thirty days after the decision of such board, by the county auditor or any complainant, or any person the valuation of whose property is increased by the county board of revision. Such appeal shall be taken by written notice to that effect, filed with the tax commission and with the county auditor, who shall thereupon certify to the commission a copy of the record of the board of revision, pertaining to the original complaint, together with the minutes thereof, and all evidence, documentary or otherwise, offered in connection therewith. Upon receipt of notice of appeal, the county auditor shall notify all parties interested, in the manner provided herein, and shall file proof of such notice with the tax commission of Ohio. (106 v. 260, § 53, W. L. § 31.)

Hearing by tax commission.

SEC. 5611. The tax commission of Ohio may hear the appeal on the record, minutes and evidence thus submitted or may in its discretion make other investigations with respect to the complaint. The commission shall ascertain and determine the true value in money of the property complained of, and certify its action to the county auditor, who shall correct the tax list and duplicate in the manner provided by law for making corrections thereon. (106 v. 260, § 54, W. L. § 32.)

Abstract transmitted to tax commission annually.

SEC. 5612. On or before the first Monday of July, annually, each county auditor shall make out and transmit to the tax commission of Ohio an abstract of the real and personal property of each taxing district in his county, in which he shall set forth the aggregate amount and value of each class of real and personal property in such county as it appears on his tax list, or on the statement and returns on file in his office. (106 v. 262, § 61, W. L. § 58.)

Determination of valuations by tax commission, annually.

SEC. 5613. The tax commission of Ohio shall, annually, determine whether the real and personal property, and the various classes thereof, in the several counties, cities, villages and taxing districts in the state, have been assessed at the true value thereof in money, and if it finds that the real or personal property, or any class of real or personal property, in any county, city, village or taxing district in the state as reported by the several county auditors to it, is not listed at its true value in money, it may increase or decrease the aggregate value of the real property or of the personal property, or any

class of real or personal property, in any such county, township, city, village, or taxing district, or in any ward or division of a municipal corporation, by such rate per cent, or by such amount as will place such property on the tax list at its true value in money, to the end that each and every class of real and personal property in the state shall be listed and valued for taxation by an equal and uniform rule at its true value in money. (106 v. 267, § 76, W. L. § 57.)

The tax commission is not authorized to increase valuations of real property in excess of its true value in money.
Blinn Treas. v. Cole, 90 Ohio State 458.

Rate of increase or decrease transmitted to county auditor.

SEC. 5614. When the tax commission of Ohio has increased or decreased the aggregate value of the real or personal property or any class thereof, in any taxing district or subdivision thereof, it shall transmit to each county auditor a statement of the amount or rate per cent to be added to or deducted from the valuation of such property, or class thereof, in each taxing district or subdivision thereof, in his county, specifying the amount or rate per cent to be added to or deducted from the valuation of the real or personal property or class of either in such district or subdivision thereof. (106 v. 267, § 77, W. L. § 60.)

Additions and deductions, how made.

SEC. 5615. The county auditor shall forthwith add to or deduct from each tract, lot or parcel of real property, or class of real property, the required per cent or amount of the valuation thereof, and shall forthwith add to or deduct from the amount of personal property assessed in each name the required per cent or amount of the valuation of any kind or class of personal property included therein, as ascertained by reference to the statements or returns on file in his office, adding or deducting, in each case, any sum less than five dollars so that the value of any separate tract, lot or parcel of real property and the aggregate value of the personal property listed in any name shall be ten dollars or some multiple thereof. (106 v. 267, § 78, W. L. § 61.)

Time within which complaint may be made to tax commission.

SEC. 5616. Any person, board or officer authorized by this act to file complaints with the county board of revision may complain to the tax commission of Ohio at any time prior to the thirty-first day of December in any year, of the determination of a county auditor respecting the liability of any property to taxation in that year, or its exemption therefrom. The commission shall hear such complaint and determine whether the property complained of is subject to taxation and certify its findings to the county auditor, who shall correct the tax list and duplicate accordingly. (106 v. 265, § 69.)

CHAPTER SIXTEEN.

BANKS AND BANKERS.

SECTION

- 5407. "Bank" and "bankers" defined.
- 5408. Shares or capital of banks, incorporated or unincorporated.
- 5409. Tax on real estate of bank.
- 5410. Names of stockholders and shares of each.
- 5411. Return made by cashier, etc., to auditor.
- 5412. Auditor to fix value of bank shares or property.
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- 5414. Penalty for making false return.

SECTION

- 5617. Report of banks transmitted to tax commission.
- 5618. Annual examination of reports of banks.
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- 5620. Annual certificate of value of bank shares to county auditor.
- 5621. Review and correction of findings.
- 5672. Tax a lien upon bank shares.
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"Bank" and "bankers" defined.

SEC. 5407.. A company, association, or person, not incorporated under a law of this state or of the United States, for banking purposes, who keeps an office or other place of business, and engages in the business of lending money, receiving money on deposit, buying and selling bullion, bills of exchange, notes, bonds, stocks, or other evidences of indebtedness, with a view to profit, is a bank, or banker, within the meaning of this chapter. (R. S. Sec. 2758.)

This and the following sections are intended to have a uniform operation upon banks, and to tax them upon the basis of their capital stock, surplus and undivided profits: *Patton v. Banks*, 7 O. N. P. 401, 10 O. D. (N.P.) 321.

The definition of a bank or banker in this section includes a partnership which is formed for and engages in the business of banking: *Robinson v. Ward*, 13 O. S. 293.

A firm or corporation doing a general merchandising or other business and not incorporated for banking purposes, which engages in the business of receiving money on deposit, subject to check and paying interest thereon, without also engaging in the business of loaning money and buying and selling bullion and other evidences of indebtedness, does not engage in all four pursuits enumerated in Section 5407 and is therefore not a bank within the comprehension of that statute. Such firm or corporation is therefore not required to make the returns to the auditor which the law demands of banks in this chapter. *A. G. R. 1911-1912*, p. 662.

Shares or capital of banks, incorporated or unincorporated.

SEC. 5408. All the shares of the stockholders in an incorporated bank or banking association, located in this state, incorporated or organized under the laws of the state or of the United States, and all the shares of the stockholders in an unincorporated bank, located in this state, the capital stock of which is divided into shares held by the owners of such bank, and capital employed, or the property representing it, in an unincorporated bank the capital stock of which is not divided into shares, located in this state, shall be listed at the true value in money, and taxed only in the city, ward, or village where such bank is located. (R. S. Sec. 2762.)

Incorporated banks are not themselves to be taxed, but their stockholders are to be taxed upon their shares according to their true value in money as ascertained in accordance with G. C. § 5412: *Telegraph Co. v. Poe*, 61 Fed. 449, 8 O. F. D. 158.

Shares in national banks cannot be taxed at a rate exceeding that imposed on state banks: *Frager v. Siebern*, 16 O. S. 615.

State authorities will be enjoined from collecting from the owners of shares of stock in a national bank an amount in excess of the tax on other moneyed capital; as where national bank stock is valued at its actual value in money and other capital is valued far below its actual value: *Pelton v. Bank*, 101 U. S. 143, 4 O. F. D. 573; see to the same effect, *Cummings v. Bank*, 101 U. S. 153, 4 O. F. D. 578; *Bank v. Miller*, 19 Fed. 372, 5 O. F. D. 247.

Where the taxing officials assess real property at one-third of its true value and ordinary moneyed capital at three-fifths of its true value, it will be enjoined from collecting a tax upon national bank stock which is systematically valued at approximately its true value: *Cummings v. Bank*, 101 U. S. 153, 4 O. F. D. 578.

Shares of stock in a national bank are taxed exactly like shares of stock in incorporated state banks: *Bank v. Chapman*, 173 U. S. 205, 12 O. F. D. 446.

Section 5408 of the General Code, et seq., provides that the tax upon shares of stock of incorporated banks or banking associations of Ohio shall be assessed against the shareholders and not against the association as such. *A. G. R. 1911-1912*, p. 592.

Tax on real estate of bank.

SEC. 5409. The real estate of a bank or banking association shall be taxed in the place where it is located, in like manner as the real estate of persons is taxed. (R. S. Sec. 2763.)

Names of stockholders and shares of each.

SEC. 5410. There shall be kept in the office at all times where the business of such bank or banking association is transacted, a full and correct list of the names and residences of the stockholders therein, and the number of shares held by each, which at all times during business hours shall be open to the inspection of all officers who are or may be authorized to list or assess the value of such shares for taxation. (R. S. Sec. 2764.)

Return made by cashier, etc., to auditor.

SEC. 5411. The cashier of each incorporated bank, and the cashier, manager or owner of each unincorporated bank, shall return to the auditor of the county in which such bank is located, between the first and second Mondays of May, annually, a report in duplicate under oath, exhibiting in detail, and under appropriate heads, the resources and liabilities of such bank at the close of business on the Wednesday next preceding the said second Monday, with a full statement of the names and residences of the stockholders therein, the number of shares held by each and the par value of each share, and of the amount of capital employed by unincorporated banks, not divided into shares, and the name, residence and proportional interest of each owner of such bank. (R. S. Sec. 2765.)

There is no authority in the statutes of the state nor of the United States, for listing and valuing the shares in a national bank in the aggregate, and placing such aggregate on the tax list in the name of the bank. Such shares, when listed and valued for taxation, are required to be placed on the proper tax list in the names of the respective owners. The listing of the shares for taxation is provided for and secured by this section, and the correction of returns made by the cashier of the bank to the county auditor is provided for by G. C. § 5413, and not by G. C. § 5401: *Miller v. Bank*, 46 O. S. 424.

It is the duty of the cashier, and not the owner of stock in a bank, to make return thereof: *Lander v. Bank*, 118 Fed. 785, 55 C. C. A. 523, 14 O. F. D. 54.

A banking company in making a report for taxation, to the auditor, is required to list all real estate upon which capital stock is issued, as assets of the bank, and it therefore cannot happen that the value of the real estate would exceed the capital stock of the bank, as was stated to be the case with certain Columbus banks owning buildings upon which a rental income was realized outside of the particular business of the bank. *A. G. R. 1911-1912*, p. 1232.

Auditor to fix value of bank shares or property.

SEC. 5412. Upon receiving such report the county auditor shall fix the total value of the shares of such banks, and the value of the property representing the capital employed by unincorporated banks, the capital stock of which is not divided into shares, each, according to their true value in money, and deduct from the aggregate sum so found, of each, the value of the real estate included in the statement of resources as it stands on the duplicate. Thereupon he shall make and transmit to the annual state board of equalization for banks a copy of the report so made by the cashier, manager or owner with the valuation of such shares or property representing capital employed as so fixed by the auditor. (R. S. Sec. 2766.)

Under this section the value of the real estate must be deducted from the aggregate sum of the total value of the property, and the amount thus obtained is to be taken as the value of the property of such bank for the purpose of taxation: *Bank v. Lucas County*, 25 Fed. 749, 5 O. F. D. 467.

If no intentional discrimination is shown to exist, the owner of stock in a national bank is not entitled to any relief on the ground that the method of assessing such stock for taxation is not in all respects the same as that of assessing other personal property for taxation: *Bank v. Miller*, 19 Fed. 372, 5 O. F. D. 247.

If the taxing officials systematically and intentionally value moneyed capital in general far below its actual value, while they assess national bank stock at its actual value, equity will enjoin the taxing officials from collecting the excessive amount of such taxation, if the owner of such stock has paid or tendered the amount of the tax which would be due if the national bank stock were assessed upon the same basis as other moneyed capital: *Pelton v. Bank*, 101 U. S. 143, 4 O. F. D. 573.

The debts owed by the owner of shares of bank stock cannot be deducted from the value of such stock, see G. C. § 5227.

When bank fails to make return.

SEC. 5413. If a bank fails to make and furnish to the county auditor the statement required, within the time herein fixed, the auditor shall examine the books of the bank; and also any officer or agent thereof under oath, with such other persons as he deems proper, and make such statement. The auditor shall have like powers, and the probate judge of the county shall exercise like powers, and perform like duties in aid of the auditor in the performance of his duties under this section, as are authorized by law in cases where the county auditor is informed, or has reason to believe, that any person has failed to make a return, or has made a false return for taxation. The statement so made out by the auditor shall stand as the statement required to be made by the cashier. (R. S. Sec. 2769.)

The remedy for a false return by a cashier of a bank is provided for in this section: *State, ex rel., v. Akins*, 63 O. S. 182; *French v. Insurance Co.*, 12 O. D. (N.P.) 183.

Power to correct the returns made by banks is conferred upon the auditor: *Miller v. Bank*, 46 O. S. 424.

Penalty for making false return.

SEC. 5414. A bank officer who fails to make out and furnish to the county auditor the return required by section fifty-four hundred and eleven, or wilfully makes a false statement in such return, shall forfeit not more than one hundred dollars together with the costs and other expenses incurred by the auditor or other proper officer in obtaining such statement. (R. S. Sec. 2769.)

Report of banks transmitted to tax commission.

SEC. 5617. On or before the first day of June, annually, each county auditor shall make and transmit to the tax commission of Ohio, a copy of the report made by the cashier, manager or owner of each bank, with the valuation of the shares or property of the bank, representing capital employed, as fixed by him. (106 v. 269, § 85.)

Annual examination of the reports of banks.

SEC. 5618. On the third Tuesday of June of each year, the tax commission of Ohio shall examine the reports of banks and banking associations made to the county auditors and the value of the shares of incorporated banks and the shares of unincorporated banks, the capital stock of which is divided into shares, each of which shares is an aliquot part of the capital so divided, and of the property representing the capital employed by unincorporated banks, the capital stock of which is not divided into shares, as fixed by the county auditors and reported to the commission. (106 v. 269, § 86.)

For decision under former statutes, Section 5603 et seq. with reference to the equalization for banks, see *Bank v. Hubbard*, 106 Fed. 809; 13 O. F. D. 508. *Lander v. Bank*, 186 U. S. 458; 14 O. F. D. 497.

Assessing shares of stock in a bank in the aggregate, and placing such aggregate valuation upon the tax duplicate in the name of the bank is not authorized. *Miller v. Bank*, 46 Ohio State 424.

If the statute fixes the time and place of the first meeting of the board of equalization, such statute is sufficient notice to the owners of bank stock; and a special notice to each bank or owner is not necessary.

Lander v. Bank, 186 U. S. 458; 14 O. F. D. 497.

Power to increase or decrease value of shares of banks.

SEC. 5619. The tax commission of Ohio may increase or decrease the value of the shares or property representing capital employed by any bank or banks, if in the judgment of the commission the value thereof so reported to the commission by the county auditor is not the true value in money, to the end that all such shares and property representing capital employed shall be assessed equally and uniformly throughout the state at the true value thereof in money. (106 v. 269, § 87.)

Annual certification of value of bank shares to county auditor.

SEC. 5620. On the third Tuesday of July, annually, the tax commission of Ohio shall certify to the county auditors of the proper counties, the valuation as fixed by it of the shares of, and property representing capital employed by banks situated in such counties, specifying as to each bank the aggregate valuation of the shares thereof or property representing capital employed thereby and the deductions to be made therefrom. The county auditor shall make the deductions as so certified, and the value of the shares of each incorporated bank or banking association, and the shares of each unincorporated bank the capital stock of which is divided into shares, each of which shares is an aliquot part of the capital so divided, and the property representing the capital employed by unincorporated banks, the capital stock of which is not divided into shares, shall, after such deductions are made, be entered upon the proper tax lists and duplicate. (106 v. 269, § 88.)

The tax against national bank shares must be assessed against shareholders who are not residents of the state of Ohio, and the valuation of such shares shall be placed upon the tax list of the counties in which the respective banks are located. *A. G. R. 1911-1912*, p. 592.

Review and correction of findings.

SEC. 5621. Between the third Tuesday of June and the third Tuesday of July, the tax commission of Ohio may, on the application of any interested person or bank, or on its own motion, review and correct its findings. (106 v. 269, § 89.)

Tax a lien upon bank shares; collection of tax; penalty.

SEC. 5672. Taxes assessed on shares of stock, or the value thereof, of a bank or banking association, shall be a lien on such shares from the first Monday of May in each year until they are paid. It shall be the duty of every bank or banking association to collect the taxes due upon its shares of stock from the several owners of such shares, and to pay the same to the treasurer of the county, in which such bank or banking association is located, as other taxes are paid, and any bank or banking association failing to pay the said taxes as herein provided, shall be liable by way of penalty for the gross amount of the taxes due from all the owners of the shares of stock, and for an additional amount of one hundred dollars for every day of delay in the payment of said taxes. (R. S. Sec. 2839.)

Each and every provision of this section contemplates an assessment upon bank stock in the name of the shareholder; and such provisions are inconsistent with any other method of assessment: *Miller v. Bank*, 46 O. S. 424.

Banks may deduct taxes paid from shareholders; when; lien.

SEC. 5673. Such bank or banking association paying to the treasurer of the county in which it is located, the taxes assessed upon its shares, in the hands of its stockholders respectively, as provided in the next preceding section, may deduct the amount thereof from dividends that are due or thereafter become due on such shares, and shall have a lien upon the shares of stock and on all funds in its possession belonging to such shareholders, or which may at any time come into its possession, for reimbursement of the taxes so paid on account of the several shareholders, with legal interest; and such lien may be enforced in any appropriate manner. (R. S. Sec. 2840.)

CHAPTER SEVENTEEN.

PUBLIC UTILITIES.

DEFINITIONS.

SECTION

5415. "Public utility" defined.
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5416. Telephone Company defined.
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SECTION

5416. Union Depot Company defined.
5416. Water Transportation Company defined.
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5416. Railroad Company defined.
5417. Gross receipts defined.
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5419. Property of public utility defined.

"Public utility" defined.

SEC. 5415. The term "public utility" as used in this act means and embraces each corporation, company, firm, individual and association, their lessees, trustees, or receivers elected or appointed by any authority whatsoever, and herein referred to as express company, telephone company, telegraph company, sleeping car company, freight line company, equipment company, electric light company, gas company, natural gas company, pipe line company, waterworks company, messenger company, signal company, messenger or signal company, union depot company, water transportation company, heating company, cooling company, street railroad company, railroad company, suburban railroad company, and interurban railroad company, and such term "public utility" shall include any plant or property owned or operated, or both, by any such companies, corporations, firms, individuals or associations.

HISTORY. — 102 v. 224, § 39. For an analogous section, see G. C. § 5542-23 (101 v. 393, § 121). General Code § 5416 (original numbering), which was repealed in 101 v. 399, was R. S. §§ 2770, 2776-1; 59 v. 88, § 1; S. & S. 766; 97 v. 572, § 1.

As to taxing Toledo and Grand Rapids railway, see appendix, § 13952.
Interurban railways, by analogy of statutes regulating the nature of business conducted, and mode of operation, now belong to the genus railroads, rather than that of street railways, hence interurban railways are deemed railroads within the meaning of G. C. § 3762, and as such may be required by municipal ordinance to light street crossings: *Ottawa v. Railway*, 13 O. C. C. (N. S.) 561 following *State v. Cleveland*, 83 O. S. 61.

Definitions.

SEC. 5416. That any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated:

When engaged in the business of conveying to, from, or through this state, or part thereof, money, packages, gold, silver, plate or other article, by express, not including the ordinary lines of transportation of merchandise and property in this state, is an express company;

When engaged in the business of transmitting to, from, through, or in this state, telephonic messages, is a telephone company;

When engaged in the business of transmitting to, from, through, or in this state, telegraphic messages, is a telegraph company;

When engaged in the business of operating cars for the transportation, accommodation, comfort, convenience, or safety of passengers, on or over any railway line or lines, in whole or in part within this state, such line or lines not being owned, leased or operated by such company, whether such cars be termed sleeping, palace, parlor, chair, dining or buffet cars, or by another name, is a sleeping car company;

When engaged in the business of operating cars for the transportation of freight, whether such freight is owned by such company, or any other person or company, over any railway line or lines in whole or part within this state, such line or lines not being owned, leased or operated, by such company, whether such cars be termed box, flat, coal, ore, tank, stock, gondola, furniture or refrigerator cars, or by another name, is a freight line company;

When engaged in the business of furnishing or leasing cars, of whatsoever kind or description, to be used in the operation of any railway line or lines, wholly or partly within this state, such line or lines not being owned, leased or operated, by such company, is an equipment company;

When engaged in the business of supplying electricity for light, heat or power purposes, to consumers within this state, is an electric light company;

When engaged in the business of supplying artificial gas for lighting or heating purposes, to consumers within this state, is a gas company;

When engaged in the business of supplying natural gas for lighting, heating or power purposes, to consumers within this state, is a natural gas company;

When engaged in the business of transporting natural gas or oil through pipes or tubing, either wholly or partially within this state, is a pipe line company;

When engaged in the business of supplying water through pipes or tubing, or in a similar manner to consumers within this state, is a waterworks company;

When engaged in the business of supplying messengers for any purpose is a messenger company;

When engaged in the business of signalling or calling by electric apparatus, or in a similar manner, for any purpose, is a signal company;

When engaged in the business of operating a union depot or station for railroad, suburban or interurban railroad purposes, is a union depot company;

When engaged in the transportation of passengers or property, by boat or other water craft, over any water way, whether natural or artificial, from one point within this state to another point within this state, or between points within this state and points without this state, is a water transportation company;

When engaged in the business of supplying water, steam or air through pipes or tubing, to consumers within this state, for heating purposes, is a heating company;

When engaged in the business of supplying water, steam or air through pipes or tubing, to consumers within this state, for cooling purposes, is a cooling company;

When engaged in the business of operating a street, suburban or interurban railroad company, wholly or partially within this state, whether cars used in such business are propelled by animals, steam, cable, electricity, or other motive power, is a street, suburban or interurban railroad company;

When engaged in the business of operating a railroad, either wholly or partially within this state, on rights-of-way acquired and held exclusively by such company, or otherwise, is a railroad company.

HISTORY.—102 v. 224, § 40. For analogous sections, see G. C. §§ 5472 (101 v. 399, § 28); 5473 (101 v. 399, § 29); 5474 (101 v. 399, § 30); 5483 (101 v. 399, § 39); 5490 (101 v. 399, § 46), and G. C. §§ 5446, 5447, 5448, 5464, 5465, 5466, 5486, 5487, 5488, 5489, 5490 and 5491 (original numbering). General Code § 5446 (original numbering) was R. S. § 2777; 91 v. 220; 90 v. 330; 59 v. 91, § 5; S. & S. 770. General Code § 5447 (original numbering) was R. S. § 2777; 91 v. 220; 90 v. 330; 59 v. 91, § 5; S. & S. 770. General Code § 5448 (original numbering) was R. S. § 2777; 91 v. 220; 90 v. 330; 59 v. 91, § 5; S. & S. 770. General Code § 5464 (original numbering) was R. S. § 2780-12; 91 v. 408, § 1. General Code § 5465 (original numbering) was R. S. § 2780-7; 92 v. 89, § 1. General Code § 5466 (original numbering) was R. S. § 2780-7; 92 v. 89, § 1. General Code § 5486 (original numbering) was R. S. § 2780-17; 92 v. 79, § 1; 95 v. 136; 97 v. 324. General Code § 5487 (original numbering) was R. S. § 2780-17; 92 v. 79, § 1; 95 v. 136; 97 v. 324. General Code § 5488 (original numbering) was R. S. § 2780-17; 92 v. 79, § 1; 95 v. 136; 97 v. 324. General Code § 5489 (original numbering) was R. S. § 2780-17; 92 v. 79, § 1; 95 v. 136; 97 v. 324. General Code § 5490 (original numbering) was R. S. § 2780-17; 92 v. 79, § 1; 95 v. 136; 97 v. 324. General Code § 5491 (original numbering) was R. S. § 2780-17; 92 v. 79, § 1; 95 v. 136; 97 v. 324. General Code § 5416 (original numbering), which was repealed in 101 v. 399, was R. S. §§ 2771, 2776-2; 88 v. 417; 59 v. 88, § 2; S. & S. 766; 97 v. 572, § 2.

Former analogous sections were referred to in *Ratterman v. Express Co.*, 49 O. S. 608; *State, ex rel., v. Jones*, 51 O. S. 492; *Ottawa v. Railway*, 13 O. C. (N.S.) 561, 22 O. C. D. 197 [following *State v. Cleveland*, 83 O. S. 61]; *Telegraph Co. v. Poe*, 61 Fed. 499, 8 O. F. D. 158.

The state cannot tax the right to engage in interstate commerce, but it can tax the property or instrumentalities in the state which are used for carrying on such commerce: *Express Co. v. Auditor*, 166 U. S. 185, 10 O. F. D. 426.

Under this section an interurban electric railroad is classed with street railroads: *Railroad v. Lohr*, 68 O. S. 101; see, to the same effect, *Railway v. Railroad*, 21 O. C. C. 391, 12 O. C. D. 113; *In re Railway*, 3 O. N. P. (N.S.) 561, 16 O. D. (N.P.) 87.

An association of individuals engaged in the special delivery business, handling parcels and packages from stores and factories, furnishing guides to strangers, delivering letters and packages, etc., is a "messenger company" within the meaning of Section 46 of the act of May 10, 1910. *A. G. R. 1911-1912*, p. 644.

A corporation organized to operate by both steam and electric power, a railroad, between designated termini wholly within this state, on part of which the freight business is handled by steam locomotives, and the passenger, express, milk and baggage business, handled by electric storage battery motor cars making regular and flag stops, the time, trip, stop and tariff schedules of which have been published, and annual reports of revenues of both of which are made to the state tax commission, may be regarded in its operation as a steam commercial railroad in part and an interurban railroad in part, notwithstanding the fact that receipts from its freight business is much greater than its interurban service, and as such it is separately taxable at one and two-tenths per cent. of its gross receipts from its interurban service and four per cent. on its steam commercial service. *State v. Railway*, 26 Dec. 264.

Inasmuch as the legislature cannot be presumed to have intended that the question,

whether or not a business is or is not a public utility business, shall be left to the discretionary determination of the taxing power, and in view of the clean cut definitions comprehensive of the term public utility, as set out in the statutes, the question as to whether or not such business constitutes a public utility, must be left to the determination of the court in a quo warranto or injunction proceeding, and therefore, when a corporation is supplying electric light or power to consumers, as set out in section 5416, General Code, whether incidental or primary, such business shall be subjected, by the taxing authorities, to the taxes provided for public utilities, even though it is supposed that the powers, in so conducting such business, are ultra vires. Regardless of the extent, therefore, to which a corporation may be engaged, in the business of furnishing electricity to consumers, regardless of the fact that it may be engaged in some other principal enterprise, to which the furnishing of electricity is subordinate, regardless of whether the furnishing of electricity is properly incidental to such other enterprise, or is virtually independent thereof, regardless of the declared purpose of the corporation, and regardless of the question of ultra vires, such company is, if it habitually and customarily furnishes electric current to consumers, an electric light company within the meaning of section 5416, General Code.

Such corporation, therefore, must make reports to the tax commission and pay excise tax on its gross receipts. Its property must also be valued for tax on a unit basis by the tax commission, upon property reports made to the commission. Such corporation is not required to make annual reports to the commission as a domestic corporation for profit, or as a foreign corporation for profit, doing business in Ohio.

The gross receipts required to be reported to the tax commission, upon which the excise tax is to be computed, under section 5417, General Code, are all the interstate receipts of the corporation so engaged in the operation of a public utility.

Under section 5419, General Code, all the real estate, personal property, moneys and credits, owned and held by such corporation, within this state, in the exercise of its corporate powers, or as incidental thereto, whether such property or any portion thereof is used in connection with such public utility business or not, must be reported and valued upon the unit basis by the tax commission. A. G. R. 1913, p. 546-547.

The term "public utility" as employed in the tax statutes, is an artificial term and is not used in the sense generally accorded it. Its definition is that set out in section 5416, General Code, and the business therein enumerated come within the term, regardless of whether or not they are capable of exercising the power of eminent domain or other powers usually considered incidental to public service corporations, and regardless also of whether or not such business is accompanied by the privileges usually considered as accompanying such companies.

The term "business," as employed in these statutes, does not necessarily contemplate only utilities for profit. This is shown by the fact that certain statutes have taken the precaution to exempt "public utilities not operated for profit" for certain purposes. A. G. R. 1913, p. 578.

The definition of "public utility" as intended by the tax statutes is that set out in section 5416, General Code, and does not depend upon any tax rights defined, or upon the general understanding of the term.

When persons or firms, therefore, who own an office building, hotel, apartment house or store room are engaged in the business of supplying to two or more tenants or others, for a separate charge therefor, electricity for light, heat or power purposes, or water, steam or heat, through pipes or tubing, for the purpose of either heating or cooling, such persons or firms come within the term "public utility" as contemplated in this statute, regardless of whether or not they are holding themselves out to the public as producers or suppliers of these commodities. They must, therefore, make their reports and pay the property and excise tax required of public utilities in this state. A. G. R. 1913, p. 575.

Where a number of telephone instruments and secondary wires leading thereto are connected with a switch board, such constitutes a public utility and renders the persons who have so associated themselves for the purpose of transmitting telephonic messages among themselves, a telephone company within the meaning of the statutes. The tax commission should value the entire system as a unit for the purpose of taxation in accordance with the rule laid down in section 5456, General Code.

Where a number of persons own wires and poles separately, these being connected with an exchange by means of a single wire or line, such an arrangement does not constitute a telephone company.

All lines connected with a switch board, including the telephones of the individuals connected with the switch board should be included by the switching company in its report to the Tax Commission and should be valued in connection with the other property of the switching company. A. G. R. 1913, p. 649.

"Gross receipts" defined.

SEC. 5417. The term "gross receipts" shall be held to mean and include the entire receipts for business done by any person or persons, firm or firms, co-partnership, or voluntary association, joint stock association, company or corporation, wherever organized or incorporated, from the operation of any public utility, or incidental thereto or in connection therewith. The gross receipts for business done by an incorporated company, engaged in the operation of a public utility, shall be held to mean and include the entire receipts for business done by such company under the exercise of its corporate powers, whether from the operation of the public utility itself or from any other business done whatsoever. (102 v. 224, § 41.)

"Gross earnings" defined.

SEC. 5418. The term "gross earnings" shall be held to mean and include the entire earnings for business done by any person or persons, firm or firms, co-partnership or voluntary association, joint stock association, company or corporation, wherever organized or incorporated, from the operation of any public utility, or incidental thereto, or in connection therewith. The gross earnings for business done by an incorporated company,

engaged in the operation of a public utility, shall be held to mean and include the entire earnings for business done by such company under the exercise of its corporate powers, whether from the operation of the public utility itself or from any other business done whatsoever. (102 v. 224, § 42.)

Property of public utility defined.

SEC. 5419. The property owned or operated by a public utility, required to make return to the commission of its property to be assessed for taxation by the commission, shall be deemed and held to include such utility's plant or plants and all real estate necessary to the daily operations of the public utility and all other property, moneys and credits owned or operated, or both, by it wholly or in part within this state, used in connection with or as incidental to the operation of the public utility, whether the same be held in common or by the individuals operating such public utility. In the case of incorporated companies, all the real estate, personal property, moneys and credits owned and held by such corporation within this state in the exercise of its corporate powers, or as incidental thereto, whether such property, or any portion thereof, is used in connection with such public utility business or not, shall be conclusively deemed and held to be the property of such public utility. (102 v. 224, § 43.)

CHAPTER EIGHTEEN.

PUBLIC UTILITIES. (Continued.)

ASSESSMENT OF PUBLIC UTILITIES OTHER THAN EXPRESS, TELEGRAPH AND TELEPHONE COMPANIES.

SECTION

- 5420. Annual statement to Commission.
- 5421. Must be signed and sworn to.
- 5422. Contents of statement.
- 5423. Assessment of property in this state.
- 5424. How value of property determined.
- 5425. What property shall include.
- 5426. Company interested may be heard.
- 5427. Correction, of assessments.
- 5428. Value of property otherwise assessed to be deducted.
- 5429. Assessment of steam and electric railroads.
- 5430. Apportionment among counties and taxpaying districts.

SECTION

- 5431. Apportionment of divisions and branches.
- 5445. Procedure when road is partly in another state.
- 9045. Taxation of road partly in this state.
- 5446. Apportionment of other public utilities.
- 5447. Certificate to County Auditor.
- 5448. Assessment must be placed on tax duplicate.
- 5460. Not required to make returns under certain sections of General Code.

Annual statement to commission.

SEC. 5420. Each public utility, as defined in this act, except express, telegraph and telephone companies, shall annually, on or before the first day of March, make and deliver to the tax commission of Ohio, in such form as the commission may prescribe, a statement, with respect to such utility's plant or plants and all property owned or operated, or both, by it wholly or in part within this state. (102 v. 224, § 44.)

Statement shall be under oath.

SEC. 5421. Such statement shall be signed and sworn to under the oath of the person constituting such public utility, if a person or under the oath of the president, secretary, treasurer, superintendent or principal accounting officer or person of such firm, association or corporation, if a firm, association or corporation. (102 v. 224, § 45.)

Contents of statement.

SEC. 5422. Such statement shall contain:

1. The name of the company.
2. The nature of the company, whether a person or persons, firm, association or corporation, and under the laws of what state or country organized.
3. The location of its principal office.
4. The name and postoffice address of the president, secretary, auditor or the principal accounting officer or person, treasurer, and superintendent or general manager.
5. The name and postoffice address of the chief officer or managing agent of the company in this state.
6. The number of shares of the capital stock.
7. The par value and market value, or if there is no market value, the actual value of its shares of stock on the first day of the month of January in which the statement is made; the amount of capital stock subscribed, and the amount thereof, actually paid in.
8. A detailed statement of the real estate owned by the company in this state, where situated, and the value thereof as assessed for taxation, making separate statements of that part used in connection with the daily operations of the company, and that part used otherwise, if any such there be.
9. An inventory of the personal property, including moneys, investments and credits, owned by the company, in this state, on the first day of the month of January in which the statement is made, where situated, and the value thereof, making separate statements of that part used in connection with the daily operations of the company, and that part used otherwise if any such there be.
10. The total value of the real estate owned by the company and situated outside of this state, making separate statements of that part used in connection with the daily operations of the company, and that part used otherwise if any such there be.
11. The total value of the personal property owned by the company and situated

outside of this state, making separate statements of that part used in connection with the daily operations of the company, and that part used otherwise if any there be.

12. The total amount of bonded indebtedness and of indebtedness not bonded; the gross receipts for the preceding calendar year from any and all sources, and the gross expenditures for the preceding calendar year.

13. In the case of street, suburban or interurban railroad companies, and railroad companies, such statements shall also give:

(a) The whole length of their lines and the length of so much of their line as is without and is within this state, including branches in and out of the state, which shall include lines and branches such companies control and use under lease or otherwise.

(b) The railway track in each county in the state, through which it runs; giving the whole number of miles of road in the county, including the track and its branches and side and second tracks, switches, and turnouts therein and the true and actual value per mile of such railway in each county, stating the valuation of main track, second or other main tracks, branches, sidings, switches and turnouts, separately.

(c) Such statement as to character, classes, number, amounts, values, locations, ownership or control and use of rolling stock as the commission may require.

(d) The depots, station houses, section houses, freight houses, machine and repair shops and machinery therein, and all other buildings, structures and appendages connected thereto or used therewith, including tool houses, and the tools usually kept therein, together with telegraph and telephone lines owned or used, and the true and actual value of all buildings and structures, and all such machinery, tools and appendages, including such telegraph and telephone lines; and the true and actual value thereof in each county in this state in which it is located.

(e) The gross earnings for the year, including earnings from telegraph lines, which shall be stated separately, on the whole length of the road, including the branches thereof, in and out of the state, and also such earnings within this state on way freight and passengers.

14. In case of pipe line, gas, natural gas, waterworks and heating or cooling companies, such statement shall also show:

(a) The number of miles of pipe line owned, leased or operated within this state, the size or sizes of the pipe composing such line, and the material of which such pipe is made;

(b) If such pipe line be partly within and partly without this state, the whole number of miles thereof within this state and the whole number of miles without this state, including all branches and connecting lines in and out of this state;

(c) The length, size and true and actual value of such pipe line in each county of this state, including in such valuation the main line, branches and connecting lines, and stating the different value of the pipe separately;

(d) Its pumping stations, machine and repair shops and machinery therein, tanks, storage tanks and all other buildings, structures and appendages connected or used therewith, including telegraph and telephone lines and wires, and the true and actual value of all such stations, shops, tanks, buildings, structures, machinery and appendages and of such telegraph and telephone lines, and the true and actual value thereof in each county in this state in which it is located; and the number and value of all tank cars, tanks, barges, boats and barrels. (102 v. 224, § 46.)

Assessment; when made.

Sec. 5423. On the second Monday of June of each year, the commission shall ascertain and assess, at its true value in money, all the property in this state of each such public utility, subject to the provisions of this act, other than express, telegraph and telephone companies. (102 v. 224, § 47.)

This and the following sections are held to be constitutional: *Sanford v. Poe*, 69 Fed. 546, 16 C. C. A. 305, 9 O. F. D. 50.

For decisions under former statutes on the subject of the equalization of the property of railroads, see *State, ex rel., v. Board of Equalization*, 65 O. S. 544.

How assessment shall be made.

Sec. 5424. In determining the value of the property of each such public utility to be assessed and taxed within the state, the commission shall be guided by the value of the property as determined by the information contained in the sworn statements made by the public utility to the commission and such other evidence and rules as will enable it to arrive at the true value in money of the entire property of such public utility within this state, in the proportion which the value of such property bears to the value of the entire property of such public utility. (102 v. 224, § 48.)

Property to be assessed.

SEC. 5425. The property of such public utilities to be so assessed by the commission shall be all the property thereof, as defined in section forty-three [G. C. § 5419] of this act. (102 v. 224, § 49.)

Hearing.

SEC. 5426. Before the assessment of such property each of such public utilities shall have the right, upon written application, to appear before the commission and to be heard in the matter of the valuation of its property for taxation. (102 v. 224, § 50.)

Corrections.

SEC. 5427. Between the date herein fixed for the assessment of the property of any such public utility for taxation by the commission, and the date herein fixed for the certification by it of the apportioned value to the county, or to the several counties as herein provided, the commission may, on the application of such public utility or any person interested therein, or on its own motion, correct the assessment or valuation of its property in such manner as will in its judgment make the valuation thereof just and equal. (102 v. 224, § 51.)

Deductions.

SEC. 5428. The commission shall deduct from the total value of the property of each of such public utilities in this state, as assessed by it, the value of the real property owned by such public utilities, if any there be, as otherwise assessed for taxation in this state, and shall justly and equitably equalize the relative values thereof. (102 v. 224, § 52.)

Valuation of railroad properties.

SEC. 5429. The commission shall ascertain all of the personal property, roadbed, stations, power houses, poles, wires, water and wood stations and real estate necessary to the daily running operations of the road, moneys and credits of each railroad company and each suburban or interurban railroad company, having any line, or road, or part thereof in this state and the undivided profits, reserved or contingent fund of the company, whether in moneys, credits, or in any manner invested, and the actual value thereof in money, and also locomotives, motors and cars not belonging to the company, but hired for its use or run under its control on its road by a sleeping car company or other company. Such rolling stock not belonging to it, but under its control, may be returned by such public utility separate from its own property, and if so returned the commission shall fix the valuation of such property separately, but must include the amount in the aggregate valuation. (102 v. 224, § 53.)

The side tracks of a railroad company, which are in daily use for the loading and unloading of freight, and ground purchased for the purpose of establishing a connection track with another railroad, do not constitute real estate, structures or stationary personal property to be "localized" for taxation, but should likewise be "averaged" for taxation over the entire road. Such being the status of railroad property of this character, the auditor cannot, after having ascertained its value under this section, again tax it as omitted property, nor can he treat it as omitted property which has escaped taxation, nor would he be justified in again placing it on the duplicate on the ground that his action was in effect a revaluation or a correction of an undervaluation: *Railway v. Hynicka*, 4 O. N. P. (N.S.) 345, 17 O. D. (N.P.) 163 [affirmed, without report, *Hynicka v. Railway*, 77 O. S. 628].

The bridge of the Cincinnati Southern Railway which spans the Ohio river, together with the viaduct or trestle leading up to it, constitutes, with the underlying ground, a part of the "roadbed," and is property necessary to the daily operation of the road, and there being no additional charge to shippers or passengers on account of the use of this bridge and viaduct, it should be taxed with the remainder of the road as a unit and "averaged" over the entire road: *Railway v. Hynicka*, 4 O. N. P. (N.S.) 345, 17 O. D. (N.P.) 163 [affirmed, without report, *Hynicka v. Railway*, 77 O. S. 628].

If a road upon the Ohio side of the Ohio river is leased by a road upon the Kentucky side of the Ohio river, and connected by a bridge and the road is appraised according to mileage, the auditor of the county in which an expensive approach to the bridge has been located and toll taken, may list such approach for taxation as a separate structure: *Cowen v. Aldridge*, 114 Fed. 44, 51 C. C. A. 670, 14 O. F. D. 21.

The "roadbed" and "realty necessary to the daily running operations of the road" are to be treated as personal property for purposes of taxation by this section: *Railway v. Hynicka*, 4 O. N. P. (N.S.) 345, 17 O. D. (N.P.) 163 [affirmed, without report *Hynicka v. Railway*, 77 O. S. 628].

The personal property to be appraised by the auditors includes the roadbed, water stations, credits, undivided profits and the like in this state, and the valuation thus obtained is to be apportioned among the counties in compliance with G. C. § 5430: *Lee v. Sturges*, 46 O. S. 163.

Apportionment.

SEC. 5430. The value of such property, moneys and credits of each of such street, suburban and interurban railroad and railroad companies, as found and determined by the

commission, shall be apportioned by the commission among the several counties through which the road, or any part thereof, runs, so that to each county and to each taxing district therein, shall be apportioned such part thereof as will equalize the relative value of the real estate, structures and stationary personal property of such company therein, in proportion to the whole value of the real estate, structures and stationary personal property of the company in this state; and so that the rolling stock, main track, roadbed, power houses, poles, wires, supplies, moneys and credits of the company shall be apportioned in like proportion that the length of the road in such county bears to the entire length thereof in all the counties, and to each city, village and district or part thereof therein. (102 v. 224, § 54.)

If a railroad runs through a taxing district, which is created under the one-mile assessment pike law (see G. C. § 7232, et seq.), it is subject to taxation proportionally: Railroad v. Commissioners, 48 O. S. 249.

Apportionment when line divided into separate divisions.

SEC. 5431. If the line of such company is divided into separate divisions or branches, so much of the rolling stock thereof as belongs to or is used solely upon such divisions or branches shall be apportioned in like manner to the county, or counties, and to each taxing district therein, through which such branch or division runs. The commission shall certify to each such county auditor such apportionment. (102 v. 224, § 55.)

The expression "belongs to" with reference to divisions or branches of the road, refers to cases where a branch is equipped separately: State, ex rel., v. Aldridge, 66 O. S. 598.

Valuation when part of road is in another state.

SEC. 5445. When a street, suburban or interurban railroad or railroad company has part of its road in this state and part thereof in another state or states, the commission shall take the entire value of such property, moneys and credits of such public utility so found and determined, in accordance with the provisions of this act, and divide it in the proportion the length of the road in this state bears to the whole length thereof, and determine the principal sum for the value of the road in this state accordingly, equalizing the relative value thereof in this state. (102 v. 224, § 56.)

Applied, cited, construed, referred to, etc., Lee v. Sturges, 46 O. S. 153; Cincinnati v. Railway, 11 Dec. Rep. 667, 28 Bull. 276.

The expression "such property" refers back to G. C. § 5423, but it does not create an exemption in favor of property which is not necessary for the daily running operations of such road: Railway v. Hynicka, 4 O. N. P. (N. S.) 345, 17 O. D. (N. P.) 163 [affirmed, without report, Hynicka v. Railway, 77 O. S. 628.]

Taxation of Road Partly in This State.

SEC. 9045. That part of the road of such consolidated company in this state, and all its real and personal property therein, shall be listed for taxation and taxed in the same manner as the road and property of other railroad companies in this state. To ascertain the proportion of the rolling machinery subject to taxation here, the officer listing it shall ascertain the value of all the rolling machinery of the company, and return a sum bearing such proportion to the value of the whole, as the length of the line of such road in this state bears to the length of the whole line. (R. S. Sec. 3387.)

The shares of such consolidated corporations which are held in Ohio are subject to taxation in this state: Lee v. Sturges; Insurance Co. v. Ratterman, 46 O. S. 153.

Apportionment of other public utilities.

SEC. 5446. The commission shall apportion the value of the property of all other public utilities assessed according to the provisions of this act as follows:

(a) When all the property of such public utility is located within the limits of a county, the assessed value thereof shall be apportioned by the commission between the several taxing districts therein, in the proportion which the property located within the taxing district in question, bears to the entire value of the property of such public utility, as ascertained and valued as herein provided, so that, to each taxing district there shall be apportioned such part of the entire valuation as will fairly equalize the relative value of the property therein located, to the whole value thereof.

(b) When the property of such public utility is located in more than one county in this state, the assessed value thereof shall be apportioned by the commission between the several counties and the taxing districts therein, in the proportion which the property located therein, bears to the entire value of the property of such public utility as ascertained and valued, as herein provided, so that to each county and each taxing district therein, there shall be apportioned such part of the entire valuation as will fairly equalize the relative value of the property therein located to the whole value thereof.

(c) When the property of such public utility, required to be assessed by the provisions of this act, is located in more than one state, the assessed value thereof shall be apportioned by the commission in such manner as will fairly and equitably determine the principal sum for the value thereof in this state, and after ascertaining such value it shall be apportioned by the commission, as herein provided. (102 v. 224, § 57.)

Certificate to county auditors.

SEC. 5447. On the second Monday of July, the commission shall certify such apportionment to the auditor of each county in which any of the property of the public utility is located. (102 v. 224, § 58.)

Entry on tax duplicate.

SEC. 5448. The county auditor shall place the apportioned value on the tax list and duplicate and taxes shall be levied and collected thereon, in the same manner and at the same rate, as other personal property in the taxing district in question. (102 v. 224, § 59.)

Not required to make returns under certain sections of General Code.

SEC. 5460. Public utilities shall not be required to make returns under, nor be governed by the provisions of sections fifty-four hundred and four, fifty-four hundred and five and fifty-four hundred and six of the General Code. (102 v. 224, § 71.)

CHAPTER NINETEEN.

PUBLIC UTILITIES. (Continued.)

ASSESSMENT OF EXPRESS, TELEGRAPH AND TELEPHONE COMPANIES.

SECTION

- 5449. Annual statement by express, telephone and telegraph companies.
- 5450. Contents; what statement shall contain.
- 5451. Assessment of values.
- 5452. How determined.
- 5453. Hearing.

SECTION

- 5454. Corrections.
- 5455. Deductions.
- 5456. Apportionment.
- 5457. Apportionment of value of express companies.
- 5458. Certificate to county auditors.
- 5459. How taxes levied.

Annual statement to commission.

SEC. 5449. On or before the first day of March, annually, every telegraph and telephone company, doing business in this state, under the oath of the person constituting such company, if a person, or under the oath of the president, secretary, treasurer, superintendent or chief officer in this state of such association or corporation, if an association or corporation shall make and file with the commission a statement in such form as the commission may prescribe. Every express company shall make and file such statement on or before the first day of August annually. (106 v. 571.) Sec. 102 v. 224, § 60.

Contents of statement.

SEC. 5450. Such statement shall contain:

1. The name of the company.
2. The nature of the company, whether a person or persons, or association or corporation, and under the laws of what state or country organized.
3. The location of its principal office.
4. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager.
5. The name and postoffice address of the chief officer or managing agent of the company in this state.
6. The number of shares of the capital stock.
7. The par value and market value, or if there is no market value, the actual value of its shares of stock on the thirty-first day of the month of December, next preceding and the amount of its capital stock subscribed and the amount thereof actually paid in, except, that in case of express companies who shall state such value on the thirtieth day of the month of June next preceding.
8. A detailed statement of the real estate owned by the company in this state, where situated, and the value thereof as assessed for taxation.
9. A full and correct inventory of the personal property, including moneys and credits, owned by the company in this state on the thirty-first day of the month of December next preceding, where situated, and the value thereof, except, that in the case of express companies such inventory shall be of such property owned on the thirtieth day of the month of June next preceding.
10. The total value of the real estate owned by the company and situated outside of this state.
11. The total value of the personal property owned by the company and situated outside of this state.
12. The total amount of bonded indebtedness and of indebtedness not bonded; the gross receipts from whatever source derived or business wherever done, for the year ending on the thirty-first day of December next preceding; and the total gross expenditures for such year, except, that in case of express companies such statement shall be made of the gross receipts for the year ending on the thirtieth day of June next preceding, and the total gross expenditure for such year.
13. In the case of telegraph and telephone companies, such statements shall also set forth, the whole length of their lines, and the length of so much of their lines as is without and is within this state, which shall include the lines such telegraph and telephone companies control and use under lease or otherwise and the miles of wire in each taxing district in this state.
15. In the case of express companies, such statement shall also contain the entire

receipts including all sums earned or charged, whether actually received or not, from whatever source derived, for business done within this state, for the year ending the thirtieth day of June, for and on account of such company, including the company's proportion of gross receipts for business done by it within this state in connection with other companies, firms, corporations, persons, or associations, excluding therefrom all receipts derived wholly from interstate business or business done for the federal government. Such statement shall also contain the total gross receipts of such company, for such period, from business done within this state.

16. In the case of express companies, the gross receipts for the year ending thirtieth day of June, from whatever source derived, of each office within this state, giving the name of each office in this state.

17. In the case of express companies, such statement shall also contain the whole length of the line of rail and water routes, over which the company did business on the thirtieth day of June and the length of so much of such lines of land and water transportation as is without and within this state, naming the lines within this state. (106 v. 591.) See 102 v. 224, § 61.

Assessment of values.

SEC. 5451. On the first Monday in July of each year, the commission shall ascertain and assess the value of the property of the telegraph and telephone companies in this state, except that in the case of express companies the commission shall ascertain and assess such value on the first Monday of September of each year. (106 v. 572.) See 102 v. 224, § 62.

How determined.

SEC. 5452. In determining the value of the property of such companies in this state, to be taxed within the state and assessed as herein provided, the commission shall be guided by the value of the property as determined by the value of the entire capital stock of the companies, and such other evidence and rules as will enable such commission to arrive at the true value, in money, of the entire property of such companies within this state, in the proportion which such property bears to the entire property of the companies, as determined by the value of the capital stock thereof, and such other evidence and rules. (102 v. 224, § 63.)

The property of a corporation may be regarded in the aggregate, as a unit, an entirety, as a plant designed for a specific object; and its value may be estimated not in parts, but taken as a whole. *State ex rel. v. Jones*, 54 Ohio State 492. *Express Company v. Auditor*, 166 U. S. 185.

Hearing.

SEC. 5453. Before the assessment of the property of any express, telegraph or telephone company is determined, any company or person interested shall have the right, on written application, to appear before the commission and be heard in the matter of the valuation of the property of any company for taxation. (102 v. 224, § 64.)

Corrections.

SEC. 5454. Between the date herein fixed for the assessment of the property of any such company for taxation by the commission, and the date herein fixed for the certification by the commission of the apportioned valuation to the several counties, the commission may, on the application of any interested person or company, or on its own motion, correct the assessment or valuation of the property of any such company, in such manner as will, in its judgment, make the valuation thereof just and equal. (102 v. 224, § 65.)

Errors in assessing the tax cannot be corrected by the courts until the remedies provided by statute for obtaining such correction have first been exhausted: *State v. Express Co.*, 2 O. N. P. 98, 3 O. D. (N. P.) 326 [affirmed, *Express Co. v. State*, 55 O. S. 69].

Deductions.

SEC. 5455. The commission shall deduct from the total value of the property of each express, telegraph and telephone company in this state, the value, as assessed for taxation of any real estate situated within this state and owned by such company. (102 v. 224, § 66.)

Apportionment.

SEC. 5456. The value of the property of telegraph and telephone companies of this state, after deducting the value of the real estate, shall be apportioned by the commission among the several counties through or into which the lines of such telegraph or telephone companies run, so that to each county shall be apportioned such part of the entire valuation

as will equalize the relative value of the property of the company therein, in proportion to the whole value of the property of the company in the state, and in the proportion that the length of the lines of wire owned by the company in the county, bears to the whole length of the lines of wire in all the counties in the state, and to each city, village and taxing district, or part thereof, therein. (102 v. 224, § 67.)

Apportionment of value of express companies.

SEC. 5457. The value of the property of express companies shall be apportioned by the commission among the several counties in which the company does business, in the proportion that the gross receipts in each county, bear to the entire gross receipts in all the counties in the state, and to each city, village and taxing district, or part thereof, therein. (102 v. 224, § 68.)

Apportionments certified to county auditors.

SEC. 5458. On the second Monday of July, the commission shall certify to the county auditor the amount apportioned to his county and to each city, village, township or other taxing district therein, except that in the case of express companies the commission shall so certify on the third Monday of September. (106 v. 573.) Sec 102 v. 224, § 69.

How taxes levied.

SEC. 5459. The county auditor shall place the apportioned valuation on the tax list and duplicate, and taxes shall be levied and collected thereon, at the same rate and in the same manner, as taxes are levied and collected on other personal property in the taxing district in question. (102 v. 224, § 70.)

CHAPTER TWENTY.

PUBLIC UTILITIES. (Continued.)

EXCISE TAX. — SLEEPING CAR, FREIGHT LINE AND EQUIPMENT COMPANIES.

SECTION

- 5462. Annual statement to Commission.
- 5463. Contents of statement.
- 5464. Further statement.
- 5465. Method of fixing assessments.

SECTION

- 5466. Company may be heard.
- 5467. Review and correction of finding.
- 5468. Certificate to state auditor.
- 5469. Collection of tax.

Verified statement.

SEC. 5462. Annually, between the first and thirty-first days of May, every sleeping car, freight line and equipment company, doing business or owning cars which are operated in this state, shall, under the oath of the person constituting such company, if a person, or under the oath of the president, secretary, treasurer, superintendent or chief officer in this state of such association or corporation, if an association or corporation, make and file with the commission a statement in such form as the commission may prescribe. (102 v. 224, § 73.)

Statement shall contain; what.

SEC. 5463. Such statement shall contain:

1. The name of the company.
2. The nature of the company, whether a person or persons or association or corporation, and under the laws of what state or country organized.
3. The location of its principal office.
4. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager.
5. The name and postoffice address of the chief officer and managing agent of the company in this state.
6. The number of shares of capital stock.
7. The par and market value, or, if there is no market value, the actual value of the shares of stock on the first day of May.
8. A detailed statement of the real estate owned by the company in this state, where situated, and the value thereof as assessed for taxation.
9. The total value of the real estate owned by the company and situated outside of this state.
10. The whole length of the lines of railway over which the company runs its cars, and the length of so much of such lines as is without and is within this state.
11. The whole number and value of the cars owned or leased by the company classifying the cars according to kind, and the daily average number of cars operated in this state. (102 v. 224, § 74.)

Equipment company; statement to contain what.

SEC. 5464. In the case of an equipment company, such statement shall also contain the whole number and value of the cars owned and leased by the company, classifying the cars according to kind; the whole length of the lines of railway, wherever located, operated by the companies, naming them, to which cars owned by such equipment company are leased, and the length of so much of such lines as is without and within this state, giving the name and location of the lines wholly or partially within this state. 102 v. 224, § 75.

Valuation.

SEC. 5465. On the first Monday in July, the commission shall ascertain and determine the amount and value of the proportion of the capital stock of sleeping car, freight line and equipment companies, representing capital and property of such companies owned and used in this state, and in so determining shall be guided in each case by the proportion of the capital stock of the company representing rolling stock, which the miles of railroad over which such company runs cars, or its cars are run in this state, bear to the entire number of miles in this state and elsewhere over which such company runs cars, or its

cars are run, and such other rules and evidence as will enable the commission to determine, fairly and equitably, the amount and value of the capital stock of such company representing capital and property owned and used in this state. (102 v. 224, § 76.)

Under the terms of the statutes, only the rolling stock of freight line companies is to be assessed for taxation by the tax commission; the other property being returned locally. A. G. R. 1913, p. 611.

Hearing.

SEC. 5466. Before the amount and value of the capital stock of any company representing capital and property owned and used in this state is determined, any company or person interested shall have the right, on written application, to appear before the commission and be heard in the matter of such determination. (102 v. 224, § 77.)

Corrections.

SEC. 5467. Between the date herein fixed for fixing the amount and value of the capital stock of any company representing capital and property owned and used in this state, and the date herein fixed for the certification to the auditor of state of such amount, the commission may, on the application of any person or company interested, or on its own motion, review and correct its action in such manner as it deems just and proper. (102 v. 224, § 78.)

Certified to auditor of state; excise tax.

SEC. 5468. On the first Monday in August of each year, the commission shall certify such amount to the auditor of state, who shall charge a sum in the nature of an excise tax, to be collected from each sleeping car, freight line and equipment company, doing business or owning cars which are operated in this state, to be computed by taking one and two-tenths per cent. of the amount fixed by the commission as the value of the portion of the capital stock representing the capital and property of each company owned and used in this state. (102 v. 224, § 79.)

Under sections 5462 and 5468, General Code, freight line companies are subjected to a tax in the nature of an excise tax, which tax is assessed upon the amount of rolling stock of such companies which is located in Ohio, and which amount is to be determined by the proportion of the capital stock of the company representing rolling stock which the miles of railroad over which the company runs cars or its cars are run in this state, bears to the entire number of miles in this state and elsewhere over which the company runs cars and its cars are run, and such other rules as may conduce to an equitable proportionment of value. A. G. R. 1913, p. 610.

Collection by treasurer of state.

SEC. 5469. On or before the first day of September of each year, the auditor of state shall certify to the treasurer of state, as herein provided, for collection from each sleeping car, freight line and equipment company, doing business or owning cars which are operated in this state, the amount so charged. (102 v. 224, § 80.)

CHAPTER TWENTY-ONE.

PUBLIC UTILITIES. (Continued.)

EXCISE TAX. — PUBLIC UTILITIES OTHER THAN SLEEPING CAR, FREIGHT LINE AND EQUIPMENT COMPANIES.

SECTION		SECTION	
5470.	Annual statement to Tax Commission.	5476.	Gross receipts of business within state required.
5471.	Contents of statement.	5477.	Ascertaining gross earnings of railroads.
5472.	Further statement of Railroad Company.	5478.	Ascertaining gross earnings of Street, Suburban and Interurban Companies.
5473.	Further statement of Street, Suburban or Interurban Company.	5479.	Company may be heard.
5473-1.	Statement by telegraph and telephone companies.	5480.	Review and correction of findings.
5474.	Further statement of other companies.	5481.	Certificate of gross receipts of certain companies.
5475.	Ascertaining gross receipts of certain companies.	5482.	Certificate of gross earnings of Railroad Companies.

For report of gross receipts of Express Companies, see paragraphs 15, 16 and 17 of Section 5450.

If an express company has filed a statement, and the auditor has assessed an unlawful tax on the gross receipts alone, which the company has paid under protest, an action will lie to recover whatever the amount thus paid in may be in excess of the amount properly due: *Ratterman v. Express Co.*, 49 O. S. 608; see, to the same effect, *Telegraph Co. v. Mayer*, 28 O. S. 521.

The test prescribed by this statute in determining the character of the corporation is the kind of business carried on by it, since an excise tax is a tax upon business and the tax imposed is upon the business carried on: *Railroad v. Poland*, 10 O. N. P. (N. S.) 617.

This and the following sections are constitutional, as an excise tax upon the privilege of doing business within the state: *State, ex rel., v. Jones*, 51 O. S. 492; *Express Co. v. State*, 55 O. S. 69 [following and approving *Telegraph Co. v. Mayer*, 28 O. S. 521]; *Sanford v. Poe*, 69 Fed. 546, 16 C. C. A. 305, 9 O. F. D. 50; *Express Co. v. Auditor*, 166 U. S. 185, 10 O. F. D. 426; *Express Co. v. Auditor*, 165 U. S. 194, 10 O. F. D. 665.

If the state assesses a tax upon the receipts of a telegraph company which are in part derived from interstate commerce and in part by intrastate commerce, and such receipts, although returned in gross are capable of being separated and apportioned, such taxes are valid to the extent that such receipts were derived from intrastate commerce, but they are invalid to the extent that such receipts are derived from interstate commerce: *Ratterman v. Telegraph Co.*, 127 U. S. 411, 6 O. F. D. 74.

Making and filing statement by public utility.

SEC. 5470. Each public utility, except express and street, suburban and interurban railroad and railroad companies, doing business in this state, shall, annually, on or before the first day of August, and each street, suburban and interurban railroad and railroad company shall, annually, on or before the first day of September, under the oath of the person constituting such company, if a person, or under the oath of the president, secretary, treasurer, superintendent or chief officer in this state, of such association or corporation, if an association or corporation, make and file with the commission a statement in such form as the commission may prescribe. (106 v. 573.) See 102 v. 224, § 81.

Statement; what shall contain.

SEC. 5471. The statement, provided for in the preceding section, shall contain:

1. The name of the company.
2. The nature of the company, whether a person or persons or association or corporation, and under the laws of what state or country organized.
3. The location of its principal office.
4. The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager.
5. The name and postoffice address of the chief officer or managing agent of the company in this state. (102 v. 224, § 82.)

Further statement by railroad company.

SEC. 5472. In the case of each railroad company, such statement shall also contain the entire gross earnings, including all sums earned or charged, whether actually received or not, for the year ending on the thirtieth day of June next preceding, from whatever source derived, for business done within this state, excluding therefrom all earnings

derived wholly from interstate business or business done for the federal government. Such statement shall also contain the total gross earnings of such company for such period in this state from business done within this state. (102 v. 224, § 83.)

When a railroad is engaged in the business of transporting a commodity from without the state to a consignee within this state, and charges for demurrage or storage for holding such commodity within this state, subject to directions of the consignee, the charge so made may not be regarded as earnings on interstate business within the comprehension of sections 5472 and 5477 of the excise tax law; and this state may not tax such earnings. A. G. R. 1913, p. 592.

Further statement by street, suburban or interurban railroad company.

SEC. 5473. In the case of each street, suburban or interurban company, such statements shall also contain the entire gross earnings, including all sums earned or charged, whether actually received or not, for the year ending on the thirtieth day of June next preceding; from whatever source derived, for business done within this state, excluding therefrom all earnings derived wholly from interstate business or business done for the federal government. Such statement shall also contain the total gross earnings of such company for such period in this state from business done within this state. (102 v. 224, § 84.)

Statement by telephone and telegraph companies.

SEC. 5473-1. In the case of telegraph and telephone companies, such statement shall also contain in the entire gross receipts, including all sums earned or charged, whether actually received or not, for the year ending the thirtieth day of June, from whatever source derived, whether messages, telephone tolls, rentals, or otherwise, for business done within this state, including the company's proportion of gross receipts for business done by it within this state in connection with other companies, firms, corporations, persons or associations excluding therefrom all receipts derived wholly from interstate business or business done for the federal government. Such statement shall also contain the total gross receipts of such company, for such period, from business done within this state. (106 v. 573.)

What statement shall contain.

SEC. 5474. In the case of all such public utilities except railroad, street, suburban and interurban railroad companies and telegraph and telephone companies, such statement shall also contain the entire gross receipts of the company, including all sums earned or charged, whether actually received or not, from whatever source derived, for business done within this state for the year next preceding the first day of May, including the company's proportion of gross receipts for business done by it within this state in connection with other companies, firms, corporations, persons or associations, but this shall not apply to receipts from interstate business, or business done for the federal government. Such statement shall also contain the total gross receipts of such company for such period in this state from business done within the state. (106 v. 573.) Sec. 102 v. 224, § 85.

For distinction between interstate and intra state receipts of a natural gas company see A. G. R. 1912, p. 625.

Valuation determined.

SEC. 5475. On the first Monday of September the commission shall ascertain and determine the entire gross receipts of each electric light, gas, natural gas, pipe line, waterworks, messenger or signal, union depot, heating, cooling and water transportation company for business done within this state for the year then next preceding the first day of May, and of each express, telegraph and telephone company for business done within this state for the year ending on the thirtieth day of June, excluding therefrom as to each of the companies named in this section, all receipts derived wholly from interstate business or business done for the federal government. (102 v. 224, § 86.)

Where the contract between a local gas distributing company and a supplying company is such as to show that the gas furnished by the latter to the former is sold and delivered and paid for according to the volume thereof, the case is not within the rule of the decision in *State v. Coshooton Gas Company*, 12 N. P. N. S., 570, and all the receipts from the local business constitute gross receipts of the distributing company. A. G. R. 1915, p. 1621.

A Telephone Company, of Ohio, which is a mutual company organized for service among its own members, who are charged a small sum per year for running expenses, and which company received a small amount during the year for messenger service, should be taxed under the Willis tax law provisions upon its entire gross receipts, to-wit: the assessments made against each member and the amount received as extra earnings for messenger service. A. G. R. 1913, p. 1223.

Gross receipts of electric light, gas, etc., companies.

SEC. 5476. The amount so ascertained by the commission, in such instance, for the purposes of this act, shall be the gross receipts of such electric light, gas, natural gas, pipe line, waterworks, express, telegraph, telephone, messenger or signal union depot,

heating, cooling or water transportation companies for business done within this state for such year. (102 v. 224, § 87.)

Gross earnings of railroad company.

SEC. 5477. On the first Monday of October, the commission shall ascertain and determine the gross earnings as herein provided, of each railroad company whose line is wholly or partially within this state, for the year ending on the thirtieth day of June next preceding, excluding therefrom all earnings derived wholly from interstate business or business done for the federal government. The amount so ascertained by the commission shall be the gross earnings of such railroad company for such year. (102 v. 224, § 88.)

The rail transportation of iron ore from lake ports in the state of Ohio to other points in the state of Ohio constitutes interstate business, and the earnings therefrom are not to be computed in ascertaining the basis of the railroad excise tax, if such transportation is a part of a continuous transit begun outside of the state, as by water transportation on the Great Lakes. The continuity of such transit is not affected by the time at which the title to the ore as between the consignor and the consignee passes, by the fact that the ore may have been brought down to the ports and delivered to the railroad by its owner in vessels belonging to such owner or chartered by him or it, or by the fact that the railroad transportation may be for any other reason upon new and separate bills of lading; but if the ore when landed at the ports is undisposed of, so that it is there held for sale by its owner, and the subsequent Ohio transportation is in pursuance of such sale, it is intrastate in character; and even though ore be contracted for by ultimate consignees, by specification of quality and quantity or otherwise, and quantities of ore are brought down to Ohio lake ports with a general view to discharging such contracts; yet if the ore which is sold lands in Ohio and is there held or detained beyond the strict necessities of transshipment for the convenience of the owner, as distinguished from or in addition to purposes which serve the convenience of transportation, the journey or transit of the commodity must be regarded as having been interrupted at the port, although the detention is in the custody of the railroad company, and in such event the subsequent rail transportation of the ore in Ohio is purely intrastate. Whenever the rail transportation in Ohio is intrastate in character the earnings therefrom must enter into the computation of the basis of the excise tax. A. G. R. 1915, p. 2510.

Gross earnings of street, suburban and interurban railroad companies.

SEC. 5478. On the first Monday of October, the commission shall ascertain and determine the gross earnings, as herein provided, of each street, suburban and interurban railroad company whose line is wholly or partially within this state, for the year ending on the thirtieth day of June next preceding, excluding therefrom, as to each of the companies named in this section, all earnings derived wholly from interstate business or business done for the federal government. The amount so ascertained by the commission shall be the gross earnings of such street, suburban or interurban railroad company for such year. (102 v. 224, § 89.)

Hearing.

SEC. 5479. Before the gross receipts or earnings of any such public utility are determined, any company, or person interested, shall have the right, on written application, to appear before the commission and be heard in the matter of such determination. (102 v. 224, § 90.)

Corrections.

SEC. 5480. Between the dates herein fixed for the determination of the amount of the gross receipts or earnings of any such public utility, and the dates herein fixed for the certification to the auditor of state of such amount, as provided in this act, the commission may, on the application of any person or company interested, or on its own motion, review and correct its findings. (102 v. 224, § 91.)

Gross receipts certified to auditor of state.

SEC. 5481. On the first Monday of October the commission shall certify to the auditor of state, the amount of the gross receipts so determined, of electric light, gas, natural gas, pipe line, waterworks, express, telegraph, telephone, messenger or signal, union depot, heating, cooling and water transportation companies for the year covered by its annual report to the commission, as required in this act. (102 v. 224, § 92.)

In the decisions of the supreme court, a distinction is made between the exercise of the taxing power and the police power of a state with reference to the journey made by a steamer, the beginning and end of which lies within this state, and a part of the course of which extends outside of this state.

The state is permitted to impose an excise tax on the receipts realized by such journey, but it may not impose police regulations upon the same. A. G. R. 1913, p. 597.

Gross earnings certified to auditor of state.

SEC. 5482. On the first Monday of November the commission shall certify to the auditor of state the amount of the gross earnings so determined of each street, suburban and interurban railroad and railroad company for the year ending on the thirtieth day of June next preceding. (102 v. 224, § 93.)

CHAPTER TWENTY-TWO.

PUBLIC UTILITIES. (Continued.)

EXCISE AND FRANCHISE TAX; RATE; COLLECTION.

SECTION

- 5483. Excise tax on electric light, gas, etc., companies.
- 5484. Excise tax on street, suburban and interurban railroad companies.
- 5485. Excise tax on express and telegraph companies.
- 5486. Excise tax on railroad companies.
- 5487. Excise tax on pipe line companies.
- 5488. Collection by treasurer of state; notice of taxes.
- 5489. Daily statement to auditor.

SECTION

- 5490. Companies not exempt from other taxation.
- 5491. Tax credited to general revenue fund; penalty.
- 5492. Action for recovery may be brought, where.
- 5493. Effect when tax charged invalid.
- 5494. Municipal corporations exempt.
- 5505. Receipt.
- 5506. First lien.
- 5512. Action to enjoin.

Excise tax on electric light, gas, etc., companies.

SEC. 5483. In the month of October, annually, the auditor of state shall charge, for collection from each electric light, gas, natural gas, waterworks, telephone, messenger or signal, union depot, heating, cooling and water transportation company, a sum in the nature of an excise tax, for the privilege of carrying on its intra-state business, to be computed on the amount so fixed and reported by the commission as the gross receipts of such company on its intra-state business for the year covered by its annual report to the commission, as required in this act, by taking one and two-tenths per cent. of all such gross receipts, which tax shall not be less than ten dollars in any case. (102 v. 224, § 94.)

Excise tax on street, suburban and interurban railroad companies.

SEC. 5484. In the month of November, the auditor of state shall charge, for collection from each street, suburban and interurban railroad company, a sum in the nature of an excise tax, for the privilege of carrying on its intra-state business, to be computed on the amount so fixed and reported to him by the commission as the gross earnings of such company on its intra-state business for the year covered by its annual report to the commission; as required in this act, by taking one and two-tenths per cent. of all gross earnings, which tax shall not be less than ten dollars in any case. (102 v. 224, § 95.)

Whether a given railway is a commercial or an interurban road must be determined from its method of operation and the character of business which it carries on, and not exclusively from its charter; and a road which, prior to the advent of electricity as a motive power, was chartered as a steam or commercial road, and was built and operated for a considerable period as a narrow gauge steam road, but was subsequently electrified and is now operating in all respects as an interurban road, will be regarded for purposes of taxation under the excise law as an interurban rather than a steam road: Railroad v. Poland, 10 O. N. P. (N. S.) 617.

A road only eight miles long, over which but one car is operated which is propelled by electricity taken from a trolley wire, notwithstanding the company was chartered for the purpose of acquiring right of way and building, equipping, maintaining and operating a railway to transport freight, passengers, express and mail and do a general railway business. But where a road carried on a part of its business as an interurban and the remainder as a steam road, the excise tax will be assessed against the company in its two capacities: Railroad v. Poland, 10 O. N. P. (N. S.) 617.

Excise tax on express and telegraph companies.

SEC. 5485. In the month of October the auditor of state shall charge for collection, from each express and telegraph company, a sum in the nature of an excise tax, for the privilege of carrying on its intra-state business, to be computed on the amount so fixed and reported to him by the commission as the gross receipts of such company on its intra-state business for the year covered by its annual report to the commission, as required in this act, by taking two per cent. of all such gross receipts, which tax shall not be less than ten dollars in any case. (102 v. 224, § 96.)

Excise tax on railroad companies.

SEC. 5486. In the month of November, the auditor of state shall charge for collection, from each railroad company, a sum in the nature of an excise tax, for the privilege of

carrying on its intra-state business, to be computed on the amount so fixed and reported to him by the commission, as the gross earnings of such company on its intra-state business for the year covered by its annual report to the commission, as required in this act, by taking four per cent. of all such gross earnings, which tax shall not be less than ten dollars in any case. (102 v. 224, § 97.)

A former statute (R. S. § 251a; act of April 15, 1889), which required every corporation operating a railway within the state to pay to the commissioner of railroads and telegraph a fee of \$1.00 per mile for each mile of track operated by it within the state, is invalid and in violation of Art. XII, § 2, and Art. XII, § 5, of the Ohio constitution: *Railway v. State*, 49 O. S. 189.

Excise tax on pipe line companies.

SEC. 5487. In the month of October, the auditor of state shall charge for collection, from each pipe line company a sum in the nature of an excise tax, for the privilege of carrying on its intra-state business, to be computed on the amount so fixed and reported to him by the commission, as the gross receipts of such company on its intra-state business for the year covered by its annual report to the commission, as required in this act, by taking four per cent. of all such gross receipts, which tax shall not be less than ten dollars in any case. (102 v. 224, § 98.)

Collection by treasurer of state; notice of taxes.

SEC. 5488. After determining the amount of taxes or fees payable to the state, as provided in this act, the auditor of state shall thereupon prepare proper duplicates and reports, and certify them to the treasurer of state for collection. Upon receipt of such duplicate, the treasurer shall notify each company charged with taxes or fees thereon, of the amount due from it. (102 v. 224, § 99.)

Daily statement to auditor.

SEC. 5489. The treasurer of state shall proceed to collect such taxes and render a daily itemized statement to the auditor of state of the amount of taxes or fees collected and the name of the company from whom collected, under all provisions of this act. (102 v. 224, § 100.)

Companies not exempt from other taxation.

SEC. 5490. Nothing contained in this act shall exempt or relieve electric light, gas, natural gas, pipe line, waterworks, street, suburban or interurban railroad, express, telegraph, telephone, messenger or signal, union depot, railroad, heating, cooling, sleeping car, freight line, equipment and water transportation companies from the assessment and taxation of their property in the manner authorized and provided by law. (102 v. 224, § 101.)

Tax credited to general revenue fund; penalty.

SEC. 5491. All taxes received by the treasurer of state, under the provisions of this act, shall be credited to the general revenue fund. If any public utility fails or refuses to pay, on or before the fifteenth day of December, the tax assessed against it, or if any corporation fails or refuses to pay, on or before the dates fixed in this act, the fee charged against it, the treasurer of state shall certify the list of such utilities or corporations, so delinquent, to the auditor of state, who shall add to the tax or fee due, a penalty of fifteen per cent. thereon. The auditor of state shall thereupon forthwith prepare proper duplicates and records of such taxes and fees and penalties thereon and certify them to the treasurer of state for collection. Thirty days after he receives such duplicates of delinquent taxes and fees and penalties thereon from the auditor of state, the treasurer of state shall certify to the commission a list of such public utilities and corporations as have failed to pay such taxes or fees and penalties thereon. (102 v. 224, § 102.)

Action for recovery may be brought, where.

SEC. 5492. Such taxes or fees and penalties thereon may be recovered by an action in the name of the state, which may be brought in the court of common pleas of Franklin county, or of any county, in which such corporation has an office or place of business, or in which such public utility is doing business, or the line of any street, suburban or interurban railroad company or railroad company is located, and such court of common pleas shall have jurisdiction of such action regardless of the amount involved therein. The attorney general, on request of the commission, shall institute such action in the court of common pleas of Franklin county, or of any of such counties as the commission may direct. In any such action it shall be sufficient to allege that the tax, fee or penalty

sought to be recovered, stands charged on the delinquent duplicate of the treasurer of state, and that the same has been unpaid for a period of thirty days after having been placed thereon. Sums recovered in any such action shall be paid into the state treasury, to the credit of the general revenue fund. (102 v. 224, § 103.)

Effect when tax charged invalid.

SEC. 5493. In case the tax or fee herein authorized to be charged and collected against any class of corporations or public utilities, defined in this act, shall for any reason, be declared invalid, such invalidity shall in no wise affect the validity of the law, as applicable to any other class or classes of corporations or public utilities, defined in this act, nor shall the abrogation or repeal of any section or clause of this act be held to abrogate or repeal any other section or clause thereof. (102 v. 224, § 104.)

Municipal corporations exempt.

SEC. 5494. This act shall not be so construed as to require any municipal corporation within this state to make any return or pay any taxes under any provisions of this act. (102 v. 224, § 105.)

Receipt.

SEC. 5505. Upon the payment of the tax or fee, provided for in this act, to the treasurer of state, the treasurer of state shall make out and deliver to the public utility or corporation so paying a receipt for the payment by such public utility or corporation of the tax or fee herein provided for. (102 v. 224, § 116.)

A franchise tax can not be assessed against the receiver of a corporation except so far as it was due before his appointment. (U. S. District Court.) *Heeny v. Dominion Coal Co.*, 12 O. L. R. 207.

Where no time is expressly named a lien for tax becomes a charge upon the property when such tax is entered upon the roll for collection. Since therefore it is the duty of the auditor under Section 5498, General Code, to charge the Willis tax for collection on the 15th of August, the lien for said tax attaches on that date against the property of the corporation.

The personal liability of the corporation, however, attaches for the ensuing year when the corporation has been in existence during the entire month of May of that year. When, therefore, property of such corporation is sold at a judicial sale prior to August 15, the lien of the state is not to be paid out of the proceeds of said sale though the state has a claim against the corporation as such for said tax. *A. G. R. 1912, p. 586.*

First lien.

SEC. 5506. The fees, taxes and penalties, required to be paid by this act, shall be the first and best lien on all property of the public utility or corporation, whether such property is employed by the public utility or corporation in the prosecution of its business or is in the hands of an assignee, trustee or receiver for the benefit of the creditors and stockholders thereof. (102 v. 224, § 117.)

Action by attorney general.

SEC. 5512. In addition to all other remedies for the collection of any taxes or fees due, under the provisions of this act, the attorney general shall, upon the request of the commission, whenever any taxes, fees or penalties due, under this act, from any public utility or corporation, shall have remained unpaid for a period of ninety days, or whenever any corporation or public utility has failed or neglected for ninety days to make or file any report or return, required by this act, or to pay any penalty for failure to make or file any report or return, required by this act, or to pay any penalty for failure to make or file such report or return, apply to the common pleas court of Franklin county, or of any county in the state in which such public utility or corporation is located or has an office or place of business, for an injunction to restrain such public utility or corporation from the transaction of any business within this state, until the payment of such taxes or fees and penalties thereon, or the making and filing of such report or return and payment of penalties for failure to make or file such report or return, and the costs of such application, which shall be fixed by the court. Such petition shall be in the name of the state, and if it is made to appear to the court, upon hearing, that such public utility or corporation has failed and neglected, for ninety days, to pay such taxes, fees or penalties thereon, or to make or file such reports or returns, or to pay such penalties for failure to make or file such reports or returns, such court of common pleas shall grant and issue such injunction. All actions brought under this act shall have precedence over any civil cause of a different nature pending in such court, and the court of common pleas shall always be deemed open for the trial of any such action brought therein. (102 v. 224, § 123.)

CHAPTER TWENTY-THREE.

PUBLIC UTILITIES. (Continued.)

FRANCHISE TAX ON CORPORATIONS, OTHER THAN PUBLIC UTILITIES.

SECTION	SECTION
5495. Report of corporations for profit.	5514. Certified list of new corporations each month by secretary of state to commission.
5496. Verification.	5515. Information by county auditors.
5497. Contents of report.	5516. Fees; power of commission as to.
5498. Amount of capital stock determined; certified to auditor of state; fee; minimum.	5518. Certain companies exempted.
5499. Foreign corporations report.	5519. Report not required until lapse of six months from date of incorporation.
5500. Verification.	5520. Dissolution no exemption from payment or filing report.
5501. Contents.	5521. When certificate of dissolution may be filed.
5502. Valuation certified to auditor of state.	5523. Certificate of secretary of state.
5503. Collection; fee; minimum.	
5504. Domestic corporations; hearing; corrections.	
5508. Liabilities of foreign corporations; insurance companies not included in this act.	

DOMESTIC CORPORATIONS.

Report of corporations for profit.

SEC. 5495. Between the first day of May and the first day of July, 1911, and annually thereafter during the month of May, each corporation, organized under the laws of this state, for profit, shall make a report, in writing, to the commission, in such form as the commission may prescribe. (102 v. 224, § 106.)

That a franchise tax on corporations is constitutional, see *Gum Co. v. Laylin*, 66 O. S. 578.

This is a franchise or privilege tax, not a property tax.

Franchise tax does not affect property tax, 196 U. S. 311.

Incorporated in several states is a domestic in each, 6 N. P. (N. S.) 55.

Receivers, assignees and trustees must file reports until dissolution and certificate as provided for by § 11975 is filed with secretary of state. See § 5520 G. C.

An unorganized corporation is not liable for tax; it is not organized until ten per cent of its capital stock is subscribed and directors chosen.

A. G. R. No. 5, 1903, p. 999; 49 O. S. 440; A. G. R. 1912, p. 530.

A corporation which has not filed a certificate that ten per cent. of its capital stock has been subscribed is not authorized to exercise any of its corporate franchises; is not, in fact, a corporation, but has only secured authority to become a corporation, and may by suit in quo warranto be ousted from any attempt to exercise corporate franchises.

Until such certificate has been filed and the directors elected, no corporate action can legally be taken.

Such incomplete corporation is not required to file report under Section 5495; and in order to surrender its articles of incorporation it does not need to secure the certificate mentioned in Section 5521, G. C.

Within the meaning of Section 5519, G. C., the date of incorporation is the date upon which a certificate is filed in the office of the secretary of state showing that ten per cent. of its capital stock has been subscribed. A. G. R. 1915, p. 1196.

Railroad companies and other public utilities doing business in this state, which have no intrastate earnings, are not liable for the minimum excise tax of \$10.00 or for any other tax.

Such companies are liable, on the other hand, for the annual franchise tax under Sections 106-115 of the act of May 31, 1911. A. G. R. 1912, p. 2025.

Under section 5495, General Code, all corporations for profit, are subject to the Willis franchise tax unless excepted therefrom by section 5519, General Code, and therefore, domestic freight line companies are liable for this tax. Foreign freight line companies, however, not being subject to compliance with the provisions of both sections 179 and 183, are not liable for the franchise tax. A. G. R. 1913, p. 611.

Verification.

SEC. 5496. Such report shall be signed and sworn to before an officer authorized to administer oaths, by the president, vice president, secretary or general manager of the corporation, and forwarded to the commission. (102 v. 224, § 107.)

Report shall contain, what.

SEC. 5497. Such report shall contain:

1. The name of the corporation.
2. The location of its principal office.

3. The names of the president, secretary, treasurer and members of the board of directors, with the postoffice address of each.
4. The date of the annual election of officers.
5. The amount of authorized capital stock and the par value of each share.
6. The amount of capital stock subscribed, the amount of capital stock issued and outstanding, and the amount of capital stock paid up.
7. The nature and kind of business in which the corporation is engaged and its place or places of business.
8. The change or changes, if any, in the above particulars, made since the last annual report. (102 v. 224, § 108.)

Under item 7 a corporation not engaged in business is not relieved from making reports and paying taxes; see 13 N. P. (N. S.) 671.

Amount of capital stock determined; certified to auditor of state; fee; minimum.

SEC. 5498. Upon the filing of the report, provided for in the last three preceding sections, the commission, after finding such report to be correct, shall, on the first Monday of July, determine the amount of the subscribed or issued and outstanding capital stock of each such corporation. On the first Monday in August, the commission shall certify the amount so determined by it to the auditor of state, who shall charge for collection, on or before August fifteenth, as herein provided, from such corporation, a fee of three-twentieths of one per cent. upon its subscribed or issued and outstanding capital stock, which fee shall not be less than ten dollars in any case. Such fee shall be payable to the treasurer of state on or before the first day of the following October. (102 v. 224, § 109.)

Referred to: *Mannington v. Railway*, 16 O. F. D. 552, 8 O. L. R. 451 [for opinion of common pleas, see *Mannington v. Railway*, 9 O. N. P. (N. S.) 641, 20 O. D. (N. F.) 468].

A corporation which exists as a domestic corporation in two states may be assessed for taxation under the law to the full extent of its capital stock subscribed, issued and outstanding, in the same manner as any other domestic corporation: *Bridge Co. v. Mayer*, 31 O. S. 317; *State v. Bridge Co.*, 6 O. N. P. (N. S.), 55, 18 O. D. (N. F.) 273.

This tax is for the privilege of exercising franchises for the ensuing year, and not for the preceding year: In matter of *Emmerman v. Specialty Co.*, 14 O. F. D. 289; in re *Bank v. Aultman*, 14 O. F. D. 298.

The fee is for the year next ensuing from the filing of annual report and not for past enjoyment. 14 O. F. D. 289.

Fee is for entire year, not a fractional part; neither does it provide for the remitting part of the tax if corporation discontinues during year.

A. G. R. 1904-5, p. 69; see A. G. R. 1912, pp. 617, 586, 67.

FOREIGN CORPORATIONS.

Foreign corporations report.

SEC. 5499. Annually, during the month of July, each foreign corporation for profit doing business in this state, and owning or using a part or all of its capital or plant in this state, and subject to compliance with all other provisions of law, and in addition to all other statements required by law, shall make a report in writing to the commission in such form as the commission may prescribe. (102 v. 224, § 111.)

Verification.

SEC. 5500. Such report shall be signed and sworn to before an officer, authorized to administer oaths, by the president, vice-president, secretary, superintendent or managing agent in this state, and forwarded to the commission. (102 v. 224, § 111.)

Contents.

SEC. 5501. Such report shall contain:

1. The name of the corporation and under the laws of what state or country organized.
2. The location of its principal office.
3. The names of the president, secretary, treasurer and members of the board of directors, with the postoffice address of each.
4. The date of the annual election of officers.
5. The amount of authorized capital stock, and the par value of each share.
6. The amount of capital stock subscribed, the amount of capital stock issued, and the amount of capital stock paid up.
7. The nature and kind of business in which the company is engaged and its place or places of business, both within and without the state.
8. The name and location of its office or offices in this state, and the name and address of the officers or agents of the corporation in charge of its business in this state.
9. The value of the property owned and used by the company in this state, where situated, and the value of the property owned and used outside of this state, and where situated.

10. The change or changes, if any, in the above particulars, made since the last annual report. (102 v. 224, § 112.)

Valuation certified to auditor of state.

SEC. 5502. Upon the filing of the report, provided for in the last three preceding sections, the commission, from the facts thus reported and any other facts coming to its knowledge bearing upon the question, shall, on the first Monday in September, determine the proportion of the authorized capital stock of the company represented by its property and business in this state. On the first Monday of October, the commission shall certify the amount of the proportion of the authorized capital stock of each such company represented by its property and business in this state, as determined by it, to the auditor of state. (102 v. 224, § 113.)

This fee is computed upon the basis that the total of the Ohio property and business bears to the total property and business. This result gives the percentage of property and business in Ohio. The authorized capital stock, when multiplied by this percentage represents the proportion of the authorized capital stock, represented by property owned and used and business transacted in Ohio.

Example —			
Property in Ohio.....	20,000	Total	40,000
Business in Ohio.....	10,000	Total	20,000
Total	30,000	÷	60,000 = 50%

\$200,000 authorized capital stock.

\$200,000 × .50 = \$100,000, proportion employed in Ohio.

A company organized in two or more states is a domestic corporation in each state. An acceptance of the reports of a foreign corporation, does not bar the state from a collection of the proper tax.

See 6 N. P. (N.S.) 55.

Discretion in determination. A. G. R. 1910-11, p. 600.

A foreign corporation which neither owned nor used property in the state, by error, in complying with § 178 et seq., reported its entire capital stock as used in the state, may upon consent of commission file an amended report and then accept the minimum annual fee and cancel balance. A. G. R. 1909-10, p. 84.

The tax commission is an administrative body, being required to determine the tax "upon the proportion of the authorized capital stock of the corporation represented by the property owned and used and business transacted in this state." (Section 5502.) Its function is to follow the letter of the statute and make the mathematical computation according to the intent thereof. State v. Coal Company, O. L. R. 000. Decided November, 1914.

The word "business" as used in section 5502, G. C., is synonymous with the same word as used in sections 5499 and 183, G. C.

Sales of a foreign corporation to customers in Ohio solicited by traveling salesmen or by mail and necessitating the interstate transportation of the articles sold, are not to be regarded as representing "business" of such a corporation in Ohio under section 5502, G. C., although the corporation also carries on other activities in Ohio which do constitute Ohio business.

But if a stock of goods of foreign manufacture is maintained in Ohio and sales are made in this state from that stock, or are made wherever negotiated to an Ohio customer from such stock, the business is "Ohio business" within the meaning of said section.

The operation of a factory in Ohio by a foreign corporation having its principal place of business in another state constitutes "doing business" in Ohio, regardless of where the products of such factory are sold or transported; and it is reasonable and lawful under section 5502 to measure the volume of such business by sales of manufactured articles, whether such sales otherwise represent interstate commerce or not. A. G. R. 1915, p. 460.

See A. G. R. 1915, page 2411, for discussion of rule for determining relative volume of business of foreign corporations.

Collection; fee; minimum.

SEC. 5503. On or before October fifteenth, the auditor of state shall charge for collection, as herein provided, annually, from such company, in addition to the initial fees otherwise provided for by law, for the privilege of exercising its franchise in this state, a fee of three-twentieths of one per cent. upon the proportion of the authorized capital stock of the corporation represented by the property owned and used and business transacted in this state, which fee shall not be less than ten dollars in any case. Such fee shall be payable to the treasurer of state on or before the first day of the following December. (102 v. 224, § 114.)

Where a foreign corporation, other than a transportation company, transacts business and has property in Ohio, so as to make it subject to the annual tax on foreign corporations, all the business so transacted in Ohio, together with the property so owned and used, may be taken into consideration in determining that proportion of the authorized capital stock of the corporation on which the computation of the franchise tax may be based. A. G. R. 1918, p. 679.

Domestic corporations; hearing; corrections.

SEC. 5504. Between the dates herein fixed for the determination of the amount of the subscribed or issued and outstanding capital stock of a domestic corporation and the proportion of the authorized capital stock of a foreign corporation, represented by

property owned and used and business transacted by it in this state, and the dates herein fixed for the certification to the auditor of state of such amount or proportion, the commission may, on the application of any person or company interested, or on its own motion, review and correct its findings. (102 v. 224, § 115.)

Liabilities of foreign corporations; insurance companies not included in this act.

SEC. 5508. All foreign corporations, and the officers and agents thereof, doing business in this state, shall be subjected to all the liabilities and restrictions that are, or may be imposed upon corporations of like character, organized under the laws of this state, and shall have no other or greater powers. Every contract made by or on behalf of any such foreign corporation, affecting the liability thereof or relating to its property within this state, before it shall have complied with the provisions of section one hundred and seventy-eight of the General Code, shall be wholly void on its behalf and on behalf of its assigns, but shall be enforceable against it or them. Nothing contained in this section shall be held or construed to apply to insurance corporations, fraternal beneficiary associations, or building and loan associations, required by law to report to the superintendent of insurance, nor to repeal, change or modify the provisions of section one hundred and eighty-eight of the General Code. (102 v. 224, § 119.)

See § 178. Effect on contracts of non-compliance with § 178 G. C.
See 6 N. P. 82; 24 O. S. 67; 32 O. S. 388; 69 Fed. 141; also 86 Fed. 739.

Certified list of new corporations each month by secretary of state to commission.

SEC. 5514. The secretary of state shall prepare and keep a correct list of all corporations, subject to the provisions of this act, engaged in business within this state. Each month he shall file with the commission a certified report showing all the new corporations, the increase or decrease of the capital stock, or the dissolution of existing corporations, and such other information as the commission requires. For the purpose of obtaining the necessary information, the secretary of state or the commission, shall have access to the records of the offices of the county auditors of the state. (102 v. 224, § 125.)

Information by county auditors.

SEC. 5515. Upon request of the secretary of state or the commission, any county auditor shall furnish such information as is shown by the records of his office concerning corporations located within his county, and subject to the provisions of this act. (102 v. 224, § 126.)

Fees; power of commission as to.

SEC. 5516. For the purpose of determining the amount of fees due from any such corporation, the commission may investigate and determine the facts showing the proportion of the authorized capital stock of the company represented by its property and business in this state. (102 v. 224, § 127.)

Certain corporations exempted.

SEC. 5518. An incorporated company, whether foreign or domestic, owning or operating a public utility in this state, and as such required by law to file reports, with the tax commission and to pay an excise tax upon its gross receipts or gross earnings as provided in this act, and insurance, fraternal beneficial, building and loan, bond investment and other corporations, required by law to file annual reports with the superintendent of insurance, shall not be subject to the provisions of sections one hundred and six to one hundred and fifteen, inclusive, of this act. (102 v. 224, § 129.)

A steam railroad corporation which has leased its entire line and equipment and is not operating within the state of Ohio, is not required to pay an assessment under the Willis law upon its issued and outstanding capital stock. Railway v. State, O. C. C. (N.S.) 20, 61.

Section 5518, General Code, exempts from the Willis law franchise tax provisions such insurance companies as are required by law to file "annual reports with the superintendent of insurance."

Such exceptions cannot be construed therefore to include an insurance company organized for profit, which has not yet disposed of all its shares of capital stock, as required by law and has not yet been licensed to do business by the superintendent of insurance, and therefore, is not required to file reports with that official.

The franchise tax is a tax upon the privilege of being a corporation rather than a tax upon doing business. A. G. R. 1912, p. 638.

The franchise tax is a tax upon the privilege of being a corporation during the month of May, when the report is due and this tax is not intended in any way to relate to prior or subsequent existence or activities. The excise tax is a tax upon the privilege of doing a public utility business during the year period preceding June 30th. Each tax is assessed for the same

year and the funds received for each is appropriated for public purposes for the same period of time.

In accordance with the intention of section 5518, General Code, therefore, that a corporation should not be subject to both taxes for the same year, no corporation can be required to file a private corporation for profit report in May, and at the same time be required to file a public utilities report in September. A. G. R. 1913, p. 585.

Report not required until lapse of six months from date of incorporation.

SEC. 5519. A corporation shall not be required to file its first annual report under sections one hundred and six to one hundred and fifteen, [G. C. § 5495 to § 5504] inclusive, of this act, until the proper month, hereinbefore provided, for the filing of such report, next following the expiration of six months from the date of its incorporation or admission to do business in this state. (102 v. 224, § 130.)

A consolidated corporation need not file a report until after 6 months following the filing of its certificates of consolidation. A. G. R. 1908 p. 83.

Dissolution no exemption from payment or filing report.

SEC. 5520. The mere retirement from business or voluntary dissolution of a domestic or foreign corporation, without filing the certificate, provided for in sections eleven thousand nine hundred and seventy-four, eleven thousand nine hundred and seventy-five and eleven thousand nine hundred and seventy-six of the General Code, shall not exempt it from the requirements to make reports and pay fees or taxes in accordance with the provisions of this act. (102 v. 224, § 131.)

See also G. C. §§ 11978, 11975, 5498.

Receivers, trustees, etc., must file reports until certificate is filed with Secretary of State under 11975. See 5521 G. C.

A. G. R. 1911-12, p. 699.

A. G. R. 1904-5, p. 68.

A. G. R. 1912, p. 17, also p. 844.

A corporation in the hands of a receiver, assignee or trustee for the benefit of creditors and stockholders, must, through such receiver, assignee or trustee, file the reports and pay the fee prescribed by the Willis law (102 O. L. 249) until the corporation is dissolved or its charter revoked by a court of competent jurisdiction and the certificate of dissolution provided by Section 11975, has been received and filed by the secretary of state. A. G. R. 1911-1912, p. 699.

When certificate of dissolution may be filed.

SEC. 5521. In case of dissolution or revocation of its charter, on the part of a domestic corporation, or of the retirement from business in this state, on the part of a foreign corporation, the secretary of state shall not permit a certificate of such action to be filed with him unless the commission shall certify that all reports, required to be made to it, have been filed in pursuance of law, and that all taxes or fees and penalties thereon due from such corporation have been paid. (102 v. 224, § 132.)

The annual franchise fee of a domestic corporation is not due until August 15, within the meaning of Section 5521, G. C.; and the tax commission may until that date furnish the certificate mentioned in said section even though the taxes for the current year have not been paid. For foreign corporations said annual tax is not due until October 15th of each year, within the meaning of Section 5521, G. C. A. G. R. 1916, p. 1196.

Certificate of secretary of state as to foreign corporation doing business without compliance with laws; prosecution.

SEC. 5523. When the secretary of state has knowledge that a foreign corporation, organized for profit, and owning or using a part or all of its capital and plant in this state, is doing business in this state without having complied with the laws thereof, he shall certify such fact to the commission. The commission, when it ascertains from such certificate of the secretary of state, or otherwise, that any such foreign corporation is doing business in this state without having complied with the laws thereof, shall certify the same to the attorney general, with the request that he prosecute an action against such foreign corporation for the penalties provided by law, in the court of common pleas of Franklin county, or in any county in which the corporation has an office or place of business. It shall be the duty of the attorney general, upon receipt of such request, to commence and prosecute such an action. On good cause shown, the commission may remit the penalty, or part thereof, incurred by a foreign corporation under the provision of Chapter 2, of Division 1, Title III, Part First, General Code. (102 v. 224, § 134.)

For a section analogous to the section bearing this number in the original General Code, see § 5497.

See §§ 182, 186 and 191 G. C.

CHAPTER TWENTY-FOUR.

PUBLIC UTILITIES. (Continued.)

PENALTIES.

SECTION

5507. Penalty for failure to pay fee.
5509. Forfeiture of charter.
5509. When Secretary of State shall cancel charter.
5510. Penalty.

SECTION

5511. Re-instatement.
5513. Proceedings in quo warranto.
5525. Provisions applicable to delinquent companies.

Penalty for failure to pay fee.

SEC. 5507. If a public utility or corporation, required to file a report by any provision of this act, fails or neglects to make such report, as required herein, it shall be subject to a penalty of ten dollars per day for each day's omission after the time limited in this act for making such report. (106 v. 224, § 118.)

Forfeiture of charter; when secretary of state shall cancel charter.

SEC. 5509. If a corporation, wherever organized, required by the provisions of this act, to file any report or return or to pay any tax or fee, either as a public utility or as a corporation, organized under the laws of this state, for profit or as a foreign corporation for profit doing business in this state and owning or using a part or all of its capital or plant in this state, or as a sleeping car, freight line or equipment company, fails or neglects to make any such report or return or to pay any such tax or fee for ninety days after the time prescribed in this act for making such report or return or for paying such tax or fee, the commission shall certify such fact to the secretary of state. The secretary of state shall thereupon cancel the articles of incorporation of any such corporation which is organized under the laws of this state, by appropriate entry upon the margin of the record thereof, or cancel the certificate of authority of any such foreign corporation to do business in this state by proper entry. Thereupon all the powers, privileges and franchises conferred upon such corporations, by such articles of incorporation or by such certificate of authority, shall cease and determine. The secretary of state shall immediately notify such domestic or foreign corporation of the action taken by him. (102 v. 224, § 120.)

Penalty.

SEC. 5510. Any person or persons who shall exercise, or attempt to exercise, any powers, privileges or franchises, under the articles of incorporation or certificate of authority, after the same are cancelled, as provided in section one hundred and twenty of this act, shall be fined not less than one hundred dollars nor more than one thousand dollars. (102 v. 224, § 121.)

Re-instatement.

SEC. 5511. Any corporation whose articles of incorporation or certificate of authority, to do business in this state, has been cancelled by the secretary of state, as provided in section one hundred and twenty of this act, upon the filing, within two years after such cancellation, with the secretary of state, of a certificate from the commission that it has complied with all the requirements of this act and paid all taxes, fees or penalties due from it, and upon the payment to the secretary of state of an additional penalty of one hundred dollars, shall be entitled again to exercise its rights, privileges and franchises in this state, and the secretary of state shall cancel the entry made by him under the provisions of section one hundred and twenty of this act, and shall issue his certificate entitling such corporation to exercise its rights, privileges and franchises. (102 v. 224, § 122.)

When a corporation whose charter has been cancelled, applies within two years mentioned in section 5511, General Code, to the tax commission for the issuance of a certificate looking towards its reinstatement, as provided in said section, the commission may require, as a condition precedent to the issuance of such certificate, the compliance by the corporation with all the requirements for failure to comply with the corporation's charter, and the payment of all fees and penalties, for failure to pay which, action was taken. A. G. R. 1914, p. 570.

Proceedings in quo warranto.

SEC. 5513. If any corporation fails or neglects to make and file the reports or returns, required by this act, or to pay the penalties provided in this act for failure to make and file such reports or returns, for a period of ninety days after the time prescribed in this act, the attorney general, on the request of the commission, shall commence an action in quo warranto, in the circuit court of Franklin county, or of any county in this state in which such corporation is located or has an office or place of business, to forfeit and annul its privileges and franchises. If the court is satisfied that any such corporation is in default as aforesaid, it shall render judgment ousting such corporation from the exercise of its privileges and franchises within this state, and shall otherwise proceed as provided in Chapter One of Title VIII, Part 3 of the General Code. (102 v. 224, § 124.)

Provisions applicable to delinquent companies.

SEC. 5525. The provisions of sections one hundred and twenty, one hundred and twenty-one, one hundred and twenty-two, one hundred and twenty-three and one hundred and twenty-four of this act, shall apply to any public utility or corporation which for two years prior to, and for ninety days from and after the passage of this act, shall fail to pay any taxes or fees or penalties thereon, due from it to the state of Ohio, or to make or file any report or return, required by law, or to pay any penalty provided by law for failure to make or file any report or return required by law. (102 v. 224, § 159.)

CHAPTER TWENTY-FIVE.

FOREIGN INSURANCE COMPANIES.

SECTION	SECTION
5432. Annual statements of foreign insurance companies.	5439. Reinsuring, etc., risk with unauthorized foreign company.
5433. Payment of tax to treasurer of state.	5440. Annual report required of chief officer.
5433-1. What annual statement shall show, term "gross premiums" defined.	5441. When authority of insurance company revoked.
5434. Failure to pay tax or make true statement.	5442. When superintendent to inspect company.
5435. Penalty for non-payment of taxes.	5443. When foreign insurance company not admitted in state.
5436. Retaliatory provision.	5444. Expenses of inspection to be paid by company.
5437. Deposits with superintendent of insurance not taxable.	
5438. Where policy on Ohio property to be placed.	

Annual statements of foreign insurance companies.

SEC. 5432. Every insurance company incorporated by the authority of another state or government, in its annual statement to the superintendent of insurance, shall set forth the gross amount of premiums received by it from policies covering risks within this state during the preceding calendar year, without deductions for commissions, return premiums, considerations paid for reinsurance or any deductions whatever. It shall also set forth therein in separate items, return premiums paid for cancellations and considerations received from other companies for reinsurances in this state during such year. If the superintendent of insurance has reason to suspect the correctness of such statement, he may make an examination, at the expense of the state, of the books of such company or its agents for the purpose of verifying them. (R. S. Sec. 2745.)

The state may maintain an action to collect taxes on insurance premiums which are mailed in Ohio to an insurance company in New York: *State v. Insurance Co.*, 13 O. C. C. (N.S.) 113, 22 O. C. D. 51.

Payment of tax to treasurer of state.

SEC. 5433. If the superintendent of insurance finds such report to be correct, prior to the month of November in each year, he shall compute an amount of two and one-half per cent. of the balance of such gross amount after deducting such return premiums and considerations received for reinsurances as shown by the next preceding annual statement and charge them to such company as a tax upon the business done by it in this state for the period shown by such annual statement, which amount shall be paid by each such company to the treasurer of state in the month of November next succeeding. All taxes so collected shall be credited to the general revenue fund of the state. (106 v. 502.) R. S. Sec. 2745.

A tax which is imposed by this and the preceding section is a tax upon the right to do business, and not a tax upon property; and, accordingly, bonds belonging to a foreign insurance company which are deposited with the commissioner of insurance may also be subject to taxation: *Insurance Co. v. Bowland*, 196 U. S. 611, 14 O. F. D. 543, 2 O. L. R. 515; *Assurance Co. v. Halliday*, 110 Fed. 259, 13 O. F. D. 632; *Insurance Co. v. Halliday*, 126 Fed. 257, 61 C. C. A. 271, 14 O. F. D. 73; *Assurance Co. v. Halliday*, 127 Fed. 830, 14 O. F. D. 305, 1 O. L. R. 643.

Insurance companies are to be taxed upon the basis indicated in this section, unless it is shown that a higher rate is imposed by the laws of the state which incorporated such insurance company upon Ohio companies doing business therein, in which case, by virtue of G. C. § 658, the same obligations and prohibitions are to be imposed in this state upon insurance companies incorporated in such other state; *State ex rel. v. Reinmund*, 45 O. S. 214.

An earlier form of this section required a return of "the gross amount of premiums received * * * in this state." Under the statute in that form it was held that a foreign insurance company was not required to pay to the state annually two and one-half per centum of the business done by such insurance company within the state, or of the net amount of premiums received by it or from its business within the state, but only such per centum of the net amount of premiums received by it within the state: *Insurance Co. v. State*, 79 O. S. 305 [for opinion below on amended petition, see *State v. Insurance Co.* 13 O. C. C. (N.S.) 113, 22 O. C. D. 51].

If an insurance company claims that an excessive amount is exacted as a tax, its remedy is not a proceeding in mandamus, but the proper remedy is an injunction against the revoca-

tion of the license of such insurance company by the superintendent of insurance: State, ex rel., v. Hahn, 50 O. S. 714; State, ex rel., v. Tual, 16 O. C. C. 680, 9 O. C. D. 42.

Term "gross premiums" defined for taxation purposes; what annual statement shall show.

SEC. 5433-1. For the purpose of computing franchise taxes, on gross premiums, to be paid under any law of this state, now or hereafter in force, by any mutual fire insurance company authorized to do business under the laws of this state, the amount of premium deposits received by such company upon any risk within this state in excess of the net cost of insurance to the insured, shall not be included where such excess deposit is returned ratably by such company to its policyholders; but the amount of gross or aggregate premiums received by any such company shall be deemed to be the balance remaining after deducting from the gross amount of premium deposits received or collected by it on risks in this state during the preceding calendar year ending on the thirty-first day of December, that portion of gross premium deposits returned by it to policyholders during said preceding calendar year, upon the cancellation or expiration of risks upon property situated within this state. In addition to the matters of return required to be made by insurance companies for the purpose of computing taxes, any such company shall also return for such purpose in its annual statement:

(a) The total gross amount of premium deposits received or collected by it on risks in this state during the preceding calendar year ending on the thirty-first day of December;

(b) The total amount of gross premium deposits returned to policyholders during such preceding calendar year upon cancellation and upon expiration of risks upon property situated within this state. (103 v. 713.)

Failure to pay tax or make true statement.

SEC. 5434. If a company fails or refuses to pay such tax, after a statement thereof has been made and mailed to it, or if the statement required to be made by it under section fifty-four hundred and thirty-two is false or incorrect, the superintendent of insurance may revoke the license of such company doing business in this state. Upon failure or refusal to pay the tax, the superintendent of insurance shall certify that fact to the attorney-general, who shall thereupon begin an action against the company in the court of common pleas of Franklin county, or of any other county, as he may elect, to recover the amount of the tax. If such company ceases to do business in this state, it shall thereupon make report to the superintendent of insurance of the gross amount of premiums, not theretofore reported as provided in section fifty-four hundred and thirty-two, received by it from policies covering risks within this state, prior to such discontinuance of business after deducting return premiums and considerations received for reinsurance, not theretofore so reported, and shall forthwith pay to the superintendent of insurance a like per cent. of tax thereon. (R. S. Sec. 2745.)

The superintendent of insurance may, under this section, revoke the license of a foreign insurance company, or may decline to renew the same for failure to pay the tax, or to make a true statement, as required by G. C. § 5432, even if an action is pending to recover the amount of such taxes: State, ex rel., v. Insurance Company, 58 O. S. 1.

Penalty for non-payment of taxes.

SEC. 5435. If such company refuses to pay such tax, upon demand being made therefor, it shall be liable to the state of Ohio at the suit of the attorney-general, to a penalty of not more than five hundred dollars per month for each month it has failed, after demand therefor, to pay the tax. Service of process in such action shall be made according to the requirements of law governing suits brought against such companies by a policyholder therein. (R. S. Sec. 2745.)

Retaliatory provision.

SEC. 5436. If the laws of another state, territory or nation authorize charges for the privilege of doing business therein, or taxes against insurance companies organized in this state, exceeding the charges provided in this chapter, like amounts shall be charged against all insurance companies of such state, territory or nation, doing business in this state, instead of the charges herein provided. (R. S. Sec. 2745.)

Deposits with superintendent of insurance not taxable.

SEC. 5437. Neither insurance companies and associations, incorporated by the authority of another state or government, nor the superintendent of insurance, shall be required to make returns for taxation of the deposits of such companies or associations, made as

required by law, with the superintendent of insurance, for the benefit and security of policyholders; nor be governed with respect to such deposits, by the provisions of law relating to the listing of personal property or to the making of tax returns by corporations. (R. S. Sec. 2745.)

Taxable bonds deposited by a foreign insurance company with the superintendent of insurance are taxable in Franklin county, unless the insurance company has a principal office elsewhere in the state, in which event they are taxable there. It is the duty of the insurance company to list the same for taxation, Section 5437, General Code, being unconstitutional. A. G. R. 1914, page 1714.

Where policy on Ohio property to be placed.

SEC. 5438. An insurance company or agent, legally authorized to transact insurance business in this state shall not write, place, or cause to be written or placed, a policy, renewal of policy or contract for insurance upon property, situated or located in this state, except through a legally authorized agent in this state, who shall countersign all policies so issued and enter the payment of the premium upon his record. The writing, renewal, placing or causing to be written or placed of a policy of insurance in any other manner or form is a violation of the law providing for the payment of taxes by foreign insurance companies doing business in the state of Ohio, as set out and provided in this chapter. (R. S. Sec. 2745a.)

Reinsuring, etc., risk with unauthorized foreign company.

SEC. 5439. No fire insurance company or association, authorized to do business in this state, shall reinsure, dispose of, cede, pool, divide or in any manner or form, reduce a portion of its risk or liability, covering property wholly or partially located in this state, in or with a company, association, person or persons, incorporated or otherwise, not authorized by law to do the business of fire insurance in this state, or to reinsure, or assume as a reinsuring company or otherwise, in any manner or form, the whole or part of a risk or liability, covering property wholly or partially located in this state, of or for an insurance company, association, person or persons, incorporated or otherwise, not authorized by law to do the business of fire insurance in this state. (R. S. Sec. 2745a.)

Annual report required of chief officer.

SEC. 5440. The superintendent of insurance of this state annually, and at such times as he may see fit, shall require the president or other chief officer of each company or association, to file a statement under oath, showing the names of each fire insurance company, or association, with whom or for whom liability for insurance on property located wholly or partially in this state has been reinsured, disposed of, ceded, pooled, divided, or in any manner or form reduced or increased. (R. S. Sec. 2745a.)

When authority of insurance company revoked.

SEC. 5441. Any company violating any of the provisions of the next three preceding sections, upon notice and satisfactory proof thereof being made to the superintendent of insurance of this state, shall have its authority to transact business in this state revoked for a period of not less than ninety days. Any insurance company whose license to do business in this state is so revoked, shall not be again permitted to do business in this state until all taxes and penalties due from it have been paid, together with any expense that may be due under the provisions of this chapter. Such company shall only be re-admitted to transact business in this state upon a complete re-compliance with the laws in regard to the admission of such company. (R. S. Sec. 2745b.)

When superintendent to inspect company.

SEC. 5442. When notice of a violation of any provision of the next four preceding sections is received by the superintendent of insurance, he shall forthwith in person, or by deputy, visit the office of the company where such contract of insurance has been written or made, and demand an inspection of the books and records thereof. Any company refusing to exhibit its books and records for his inspection shall be guilty of violating such provisions, and the penalties provided by law shall forthwith be enforced against such company by the superintendent of insurance. (R. S. Sec. 2745c.)

When foreign insurance company not admitted in state.

SEC. 5443. When application is made by a foreign insurance company to the superintendent of insurance of this state for admission to do business in this state, it shall not be admitted until it has paid all taxes and penalties assessed against it for the violation of the laws relating to insurance. If such foreign company has been reported to the

superintendent of insurance as having violated any of the laws of this state relating to insurance, he shall make or cause to be made an examination of the books and records of the company seeking admission, and before granting license to do business in this state, he shall require it to pay into the office of the state treasurer a penalty equal to twenty per cent. of all premiums written in this state, for the six years next preceding the date of request for admission, and upon which such taxes have not already been paid. (R. S. Sec. 2745c.)

Expenses of inspection to be paid by company.

SEC. 5444. The superintendent of insurance shall receive, as compensation for services rendered under the provisions of this chapter, his necessary expenses. Such sum shall be charged against the company or companies so visited by him, and be collected by suit in any court of competent jurisdiction. (R. S. Sec. 2745d.)

CHAPTER TWENTY-SIX.

COLLATERAL INHERITANCES.

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- 5332. Exemptions.
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- 5334. When executors, trustees, etc., compensation liable to tax.
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Collateral inheritance tax; distribution.

SEC. 5331. All property within the jurisdiction of this state, and any interests therein, whether belonging to inhabitants of this state or not, and whether tangible or intangible, which pass by will or by the intestate laws of this state, or by deed, grant, sale or gift, made or intended to take effect in possession or enjoyment after the death of the grantor, to a person in trust, or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant or adopted child, shall be liable to a tax of five per cent. of its value above the sum of five hundred dollars. Fifty per cent. of such tax shall be for the use of the state; and fifty per cent. of such tax shall go to the city, village or township in which said tax originates. All administrators, executors and trustees, and any such grantee under a conveyance made during the grantor's life, shall be liable for all such taxes, with lawful interest as hereinafter provided, until they have been paid, as hereinafter directed. Such taxes shall become due and payable immediately upon the death of the decedent and shall at once become a lien upon the property, and be and remain a lien until paid. (103 v. 463.) R. S. Sec. 2731-1.

An earlier form of this statute (91 v. 169; act of April 20, 1894) was not unconstitutional by reason of its discrimination between collateral kindred: *Hagerty v. State*, ex rel., 55 O. S. 613.

The property "which shall pass by sale" within the meaning of the act is such only as passes in transactions which are in fact gifts, though in form sales, and the act does not restrict the right to dispose of property by sale for a valuable consideration, which the parties in good faith, deem adequate: *Hagerty v. State*, ex rel., 55 O. S. 613.

Personal property which is located in Ohio is subject to the inheritance tax, whether the owner resides within the state or without it: *In re Estate of Speers*, 4 O. N. P. 238, 6 O. D. (N. P.) 398.

A bequest to the wife of an adopted son is subject to this tax: *In re Estate of Hunnewell*, 3 O. L. R. 52.

A legacy to a stepson is subject to this tax: *In re Will of Hooper*, 4 O. N. P. 186, 6 O. D. (N. P.) 560.

The amount of the tax is not to be computed upon the amount of the legacy after deducting the amount of the tax: *In re Will of Hooper*, 4 O. N. P. 186, 6 O. D. (N. P.) 560.

A contingent devise is not taxable until it becomes vested: *In re Will of Hooper*, 4 O. N. P. 186, 6 O. D. (N. P.) 560.

Compensation for services for which provision is made by will is not subject to this tax: *In re Will of Hooper*, 4 O. N. P. 186, 6 O. D. (N. P.) 560.

Where the probate court, in the settlement of the estate of a decedent, determines the liability of a devise, legacy, bequest or inheritance to pay a collateral inheritance tax, under the provisions of this section, appeal may be taken by either party to the controversy regarding the tax, from the judgment of the probate court, to the court of common pleas as authorized by G. C. § 5344; and where the state, or the prosecuting attorney, in behalf of the state, takes the appeal, it may be done without giving an undertaking for such appeal, and without filing the written notice of an intention to appeal provided for in G. C. § 11207. The appeal may be perfected by either party according to the provisions of G. C. §§ 11212 and 12226: *Humphreys v. State*, 70 O. S. 67.

Boards and societies and auxiliaries thereto, which are incorporated and organized under the laws of other states, for "purposes of purely public charity or other exclusively public purposes," are not "institutions" of that class in this state within the meaning of this section; and where they are entitled to receive property within the jurisdiction of this state, by deed of gift, bequest or devise, such gift, bequest or devise is liable to a collateral inheritance tax as provided in this section, although some of the charitable work, operations and enterprises of the institutions so incorporated and organized are carried on within this state. The statute so construed is not obnoxious to the second section of our bill of rights, nor to the fourteenth amendment of the constitution of the United States: *Humphreys v. State*, 70 O. S. 67.

If a will which is executed in this state, passes to one who is not related to the testator real or personal property situated in this state, and such legatee and devisee is appointed

executrix, and after accepting such trust resigns without complying with the provisions of this and the following section, it is the duty of the probate court to appoint an administrator de bonis non with the will annexed to comply with the requirements of such statute: *Chamberlain v. Stecher*, 78 O. S. 271.

A law of a general nature, which is in full force in every part of the state, complies with Art. II, § 26, of the constitution, requiring laws of a general nature to have uniform operation throughout the state: *State, ex rel., v. Ferris*, 53 O. S. 314 [affirming *State, ex rel., v. Ferris*, 9 O. C. C. 298, 6 O. C. D. 158].

The act of April 20, 1894, entitled, "An act to impose a direct inheritance tax," 91 O. L. 166, by its exemption from taxation of the right to receive or succeed to estates not exceeding twenty thousand dollars in value, and taxing the whole right of receiving or succeeding to estates which exceed that sum in value, and in taxing at a higher rate per centum the right to receive or succeed to estates of larger value than to estates of smaller value, is in conflict with § 2 of the bill of rights of the constitution of this state, which declares that, "All political power is inherent in the people; Government is instituted for their equal protection and benefit"; and the whole act is therefore unconstitutional and void: *State, ex rel., v. Ferris*, 53 O. S. 314 [affirming *State, ex rel., v. Ferris*, 9 O. C. C. 298, 6 O. C. D. 158].

The direct inheritance tax law of April 25, 1904 (97 v. 398), was held to be constitutional: *State, ex rel., v. Guilbert*, 70 O. S. 229; see, also, *Hostetter v. State*, 5 O. C. C. (N.S.) 337, 16 O. C. D. 702 [reversing *Eury v. State*, 72 O. S. 448].

The act passed and approved April 25, 1904 (97 v. 398), entitled "An act to impose a tax upon the right to succeed to, or inherit property," is not retroactive, and applies only to such rights arising on a death occurring on or subsequent to that day: *Eury v. State*, 72 O. S. 448 [reversing *Hostetter v. State*, 5 O. C. C. 337, 16 O. C. D. 702].

The direct inheritance tax law was held not to apply to vested estates where the death had occurred prior to the passage of this act: *Estate of Bushnell*, 2 O. N. P. (N.S.) 673.

The act of April 2, 1906 (98 v. 229), which repealed the direct inheritance tax law of April 25, 1904 (97 v. 398), was not affected in its operation by G. C. § 26, with reference to the effect of repealing statutes; and accordingly the right to collect such tax terminated when the act took effect: *Friend v. Levy*, 76 O. S. 26.

The meaning of the phrase "in which said tax originates," as used in section 5331, as amended in 103 O. L., 463, is that the situs of the property passing by descent, devise, or deed or gift for general property taxation purposes in this state determines the place of the origination of the tax. A. G. R. 1914, p. 333.

In receiving property in the manner provided by section 5331, G. C., as amended, 103 O. L., 463, a public institution of learning, incorporated under the laws of another state, is not exempt from the collateral inheritance tax provided in said statute, following *Humphrey v. State*, 70 O. S., 67.

The prosecuting attorney of a county is without authority in law to settle a claim for collateral inheritance taxes for a sum less than the amount taxable. A. G. R. 1915, p. 2222.

Where heirs contest the probate of a will and a compromise is reached whereby the whole estate is divided between devisees and legatees on the one hand, and contestants, on the other, and the will is admitted to probate as a valid will, administration to follow the terms of the compromise, the amount and apportionment of the collateral inheritance tax is determined by the terms of the will itself and the value of the inheritances created thereby, without reference to the compromise. A. G. R. 1915, p. 2447.

The fact that United States bonds constitute a part of an inheritance passing to collateral heirs does not affect the amount of the collateral inheritance tax. A. G. R. 1915, p. 2449.

The Ohio collateral inheritance tax law is not applicable to the transfer of shares of stock in an Ohio corporation belonging to the estate of a deceased resident of Massachusetts. A. G. R. 1915, p. 317.

Under the collateral inheritance tax, section 5331, "said tax originates" as to the right to succeed to real estate in the city, village or township in which said real estate is located. A. G. R. 1915, p. 132.

Under Section 5331, General Code, the exemption from the collateral inheritance tax therein provided for, cannot apply to a devise to a person recognized as an adopted child, unless such child has been made a legal heir by the declaration before the probate court provided for in Section 8598, General Code. A. G. R. 1912, p. 2037.

It is the object of the collateral inheritance tax to place an assessment upon the privilege of receiving and not upon the property devised. The legislature intended the value to be taxed, to be measured by the value of the thing inherited and not by the value of the thing devised.

Under section 5331, G. C., therefore, which provides that property which passes by will or by intestate laws of this state to other than certain designated relatives, shall be liable to a tax of 5 per cent. of its value above the sum of \$200, the sum of \$200 so designated shall be deducted from the amount which the taxable heir is entitled to, after all expenses and debts of the estate devised have been subtracted. A. G. R. 1913, p. 1111. (Note change in section made subsequent to this opinion.)

Exemptions.

SEC. 5332. The provisions of the next preceding section shall not apply to property, or interests in property, transmitted to the state of Ohio under the intestate laws of the state, or embraced in a bequest, devise, transfer or conveyance to, or for the use of the state of Ohio, or to or for the use of a municipal corporation or other political subdivision thereof for exclusively public purposes, or public institutions of learning, or to or for the use of an institution in this state for purpose only of public charity or other exclusively public purposes. The property, or interests in property so transmitted or embraced in such devise, bequest, transfer or conveyance shall be exempt from all inheritance and other taxes while used exclusively for any of such purposes. (94 v. 101, § 1.)

Requests to the Presbyterian church, part to be used in Ohio, but the greater part thereof to be used elsewhere, are not exempt, since they are not for the benefit of the inhabitants of this state: *In re Estate of Brown*, 13 O. D. (N.P.) 168.

A bequest to a college, the income of which is to be used in aiding worthy students of a theological seminary, is exempt from the inheritance tax, when the seminary is open to all the public upon the same terms, and if not operated for profit.

A bequest to a society for aiding needy ministers of a certain religious denomination is subject to the inheritance tax.

A bequest to executors in trust to be distributed to any societies and corporations organized for benevolent and charitable purposes is subject to the inheritance tax.

A bequest to an individual to be administered for charitable purposes is subject to the inheritance tax.

A bequest to a church to be administered for charitable purposes in the discretion of the trustees of the church is subject to the inheritance tax.

Two bequests in the same will to the same cemetery corporation, the income of which is to be used, respectively, for the maintenance of different cemetery lots, are to be regarded as separate estates for the purpose of the inheritance tax, and if neither exceeds five hundred dollars in amount no tax is assessable.

A bequest to a charitable home for Jewish aged and infirm, which is open only to members of a specified religious denomination or sect, or those entertaining a given religious belief, is not exempt from taxation, but if the home is open to all members of a certain race upon the same terms, the bequest is exempt from the inheritance tax.

A bequest to a Jewish hospital association maintaining a hospital which is open to all on the same terms and is charitable in its nature is exempt from the inheritance tax.

A bequest to a college, the income of which is to be used in sustaining a library therein, is exempt from taxation, if the college is open to all on the same terms, and is not operated for profit. A. G. R. 1915, p. 493.

A bequest to an institution of learning, which limits its students to a particular class and religious faith, is subject to the collateral inheritance tax. A. G. R. 1915, p. 2373.

Appraisal and deduction of property not liable.

SEC. 5333. When a person bequeathes or devises property to or for the use of father, mother, husband, wife, lineal descendant, or adopted child, during life or for a term of years, and the remainder to a collateral heir, or to a stranger to the blood, the value of the prior estate, shall be appraised, within sixty days after the death of the testator, in the manner hereinafter provided, and deducted, together with the sum of five hundred dollars, from the appraised value of such property.

When compensation of executor, trustee, etc., liable to tax.

SEC. 5334. When a decedent appoints one or more executors or trustees, and instead of their lawful allowance makes a bequest or devise of property to them which would otherwise be liable to such tax, or appoints them his residuary legatees, and said bequests, devises, or residuary legacies exceed what would be a reasonable compensation for their services, such excess shall be liable to such tax, and the probate court having jurisdiction of their accounts shall fix such compensation. (90 v. 15, § 3.) R. S. Sec. 2731-3.

If the testator has bequeathed a debt due from the executor to him to such executor, in lieu of his statutory compensation, such debt is not taxable upon the excess thereof over the statutory compensation, if it is not clear that the amount of such debt is more than reasonable compensation for the work necessary to settling such estate: In re Will of Hooper, 4 O. N. P. 186, 6 O. D. (N. P.) 560.

Payment; proceedings for collection.

SEC. 5335. Taxes imposed by this subdivision of this chapter shall be paid into the treasury of the county in which the court having jurisdiction of the estate or accounts is situated, by the executors, administrators, trustees, or other persons charged with the payment thereof. If such taxes are not paid within one year after the death of the decedent, interest at the rate of eight per cent. shall be thereafter charged and collected thereon, and if not paid at the expiration of eighteen months after such death, the prosecuting attorney of the county wherein said taxes remain unpaid, shall institute the necessary proceedings to collect the taxes in the court of common pleas of the county, after first being notified in writing by the probate judge of the county of the non-payment thereof. The probate judge shall give such notice in writing. If the taxes are paid before the expiration of one year after the death of the decedent, a discount of one per cent. per month for each full month that payment has been made prior to the expiration of the year, shall be allowed on the amount of such taxes. (91 v. 170, § 4.) R. S. Sec. 2731-4.

Where the collateral heirs of an intestate decedent are of remote degree of relationship and reside in various parts of the United States, so that the administrator in the exercise of due diligence was unable for some time to acquire the information necessary to enable him to distribute the estate or to know the number and amount of the various shares into which it is to be divided; and, where, moreover, part of the real property of the estate, which constitutes the major portion of its value, is ancestral and part is non-ancestral and litigation arises as to the inheritance thereof which is not terminated for some time, failure of the administrator to pay the collateral inheritance tax on the various shares thereof within one year after the death of the decedent, if due to such causes, is excusable and the eight per cent interest provided for by section 5335, G. C., being in the nature of a penalty, should not be collected. A. G. R. 1915, p. 1109.

Deduction or collection of tax by administrator, etc.

SEC. 5336. An administrator, executor, or trustee, having in charge, or trust, property subject to such law, shall deduct the tax therefrom, or collect the tax thereon from the

legatee or person entitled to the property. He shall not deliver any specific legacy or property subject to such tax to any person until he has collected the tax thereon. (90 v. 15, § 5.) R. S. Sec. 2731-5.

Deduction and payment of tax upon certain legacies.

SEC. 5337. When a legacy subject to such tax is charged upon or payable out of real estate, the heir or devisee, before paying it, shall deduct the tax therefrom and pay it to the executor, administrator, or trustee, and the tax shall remain a charge upon the real estate until it is paid. Payment thereof shall be enforced by the executor, administrator, or trustee, in like manner as the payment of the legacy itself could be enforced. (90 v. 16, § 6.) R. S. Sec. 2731-6.

Retention or collection of tax upon certain legacies.

SEC. 5338. If such legacy is given in money to a person for a limited period, such administrator, executor or trustee shall retain the tax on the whole amount. If it is not in money, he shall make an application to the court having jurisdiction of his accounts to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatee on account of the tax and for such further order as the case may require. (90 v. 16, § 7.) R. S. Sec. 2731-7.

Sale of property for payment of tax.

SEC. 5339. Administrators, executors and trustees may sell so much of the estate of the deceased as will enable them to pay said tax in like manner as they are empowered to do for the payment of his debts. (90 v. 16, § 8) R. S. Sec. 2731-8.

A widow to whom a dower has been assigned in timber land may cut timber on such land to pay the taxes thereon: *Crockett v. Crockett*, 2 O. S. 181.

Proceedings after filing of inventory.

SEC. 5340. Within ten days after the filing of the inventory of every such estate, any part of which may be subject to a tax under the provisions of this subdivision of this chapter, the judge of the probate court, in which such inventory is filed, shall make and deliver to the county auditor of such county a copy of the inventory; or, if it can be conveniently separated, a copy of such part of the estate, with the appraisal thereof. The auditor shall certify the value of the estate, subject to taxation hereunder and the amount of taxes due therefrom, to the county treasurer, who shall collect such taxes, and thereupon place twenty-five per cent. thereof to the credit of the county expense fund, and pay seventy-five per cent. thereof into the state treasury, to the credit of the general revenue fund, at the time of making his semi-annual settlement. (91 v. 170, § 9.) R. S. Sec. 2731-9.

From a review of the decisions it is now settled in this state that the collateral inheritance tax is a tax upon the right to receive the property and not a tax upon the estate itself.

It is the specific legacies which are to be taxed therefore, and debts of the estate, as well as costs of administration, must be deducted when the estate in the aggregate has been devised collaterally.

These deductions may not be made from the inventory filed by the probate judge, under Section 5341 of the General Code, with the auditor. Such deductions must be made by application to probate court under the procedure set out for appraisal, etc., under Sections 5343 and 5344 of the General Code. Such procedure may be avoided, however, by agreement between the prosecuting attorney and all interested parties. *A. G. R. 1912, p. 1430.*

Under the inheritance tax law, the appraisement returned in the probate court is, in the first instance, binding upon all parties.

If land devised to collateral relatives is sold in partition at less than the appraised value thereof, the probate judge may not take cognizance of this fact for the purpose of computing the tax.

The probate court may not appoint appraisers to determine the actual market value of the property except on formal application under the statute. Such application must be made within a reasonable time after the death of the testator and the filing of the inventory. *A. G. R. 1915, p. 8.*

Information to be furnished probate judge by executor, etc.

SEC. 5341. When for any reason the devisee, legatee or heir who has paid such tax to become subject to such tax, the executor, administrator or trustee of the decedent shall inform the probate judge thereof within six months after he has assumed the duties of his trust, or if the fact is not known to him within that time, then within one month from the time that it does become so known to him. (90 v. 16, § 10.) R. S. Sec. 2731-10.

Refunding of tax.

SEC. 5342. When for any reason the devisee, legatee or heir who has paid such tax relinquishes or reconveys a portion of the property on which it was paid, or it is judicially determined that the whole or part of such tax ought not to have been paid, the tax, or the due proportional part thereof, shall be repaid to him by the executor, administrator or trustee. (90 v. 16, § 11.) R. S. Sec. 2731-11.

Valuation of property subject to tax.

SEC. 5343. The value of such property, subject to said tax, shall be its actual market value as found by the probate court. If the state, through the prosecuting attorney of the proper county, or any person interested in the succession to the property, applies to the court, it shall appoint three disinterested persons, who, being first sworn, shall view and appraise such property at its actual market value for the purposes of this tax, and make return thereof to the court. The return may be accepted by the court in a like manner as the original inventory of the estate is accepted, and if so accepted, it shall be binding upon the person by whom this tax is to be paid, and upon the state. The fees of the appraisers shall be fixed by the probate judge and paid out of the county treasury upon the warrant of the county auditor. In case of an annuity or life estate, the value thereof shall be determined by the so-called actuaries' combined experience tables and five per cent. compound interest. (90 v. 16, § 12.) R. S. Sec. 2731-12.

A sum paid by the collateral heirs of an intestate to a person claiming as a creditor of the estate of the decedent should be deducted from the estate for inheritance tax purposes. A. G. R. 1915, p. 1045.

Where an estate, of which the probate court of one county has principal jurisdiction, passes under the laws of descent and distribution to a single heir, and part of the estate consists of real property located in another county, the probate court of the first county has exclusive jurisdiction to appoint appraisers of the real estate upon application under section 5343, G. C., and the entire tax should be paid into the treasury of that county.

The share of the tax belonging to the municipality or township in the other county in which the real estate is located should be ascertained and should be paid by the treasurer of the first county to the treasurer of the second county as undivided tax moneys and distributed by the latter treasurer to such municipality or township at the succeeding semi-annual settlement.

In order to discharge the lien of the tax as a matter of record in the county in which the real estate is situated, duplicate receipts should be taken from the treasurer of the first county upon the payment of the tax and filed with the probate court of the second county. A. G. R. 1915, p. 1156.

Jurisdiction of probate court; prosecuting attorney to represent state.

SEC. 5344. The probate court, having either principal or auxiliary jurisdiction of the settlement of the estate of the decedent, shall have jurisdiction to hear and determine all questions in relation to such tax that arise, affecting any devise, legacy or inheritance under this subdivision of this chapter, subject to appeal as in other cases, and the prosecuting attorney shall represent the interests of the state in such proceedings. (90 v. 17, § 13.) R. S. Sec. 2731-13.

Cited: *Humphreys v. State*, 70 O. S. 67.

Semi-annual statements of probate judge; record.

SEC. 5345. Each probate judge, at least once in six months, shall render to the county auditor a statement of the property within the jurisdiction of his court that has become subject to such tax during such period, the number and amount of such taxes as will accrue during the next six months, so far as they can be determined from the probate records, and the number and amount thereof due and unpaid. Each probate judge shall keep a separate record, in a book to be provided for that purpose, of all cases arising under the provisions of this subdivision of this chapter. (91 v. 171, § 14.) R. S. Sec. 2731-14.

Fees of officers; costs chargeable to state.

SEC. 5346. The fees of officers having duties to perform under the provisions of this subdivision of this chapter, shall be paid by the county from the county expense fund thereof, and shall be the same as allowed by law for similar services. In ascertaining the amounts due the state, seventy-five per cent. of the cost of collection and other necessary and legitimate expenses incurred by the county in the collection of such taxes, shall be charged to the state and deducted from the amount of taxes to be paid into the state treasury. (91 v. 171, § 15.) R. S. Sec. 2731-15.

Final account must show payment of tax; voucher therefor.

SEC. 5347. A final settlement of the account of an executor, administrator or trustee shall not be accepted or allowed by the probate court unless it shows, and the judge of that court finds, that all taxes imposed by the provisions of this subdivision of this chapter, upon any property or interest therein, belonging to the estate to be settled by such account, have been paid. The receipt of the county treasurer shall be the proper voucher for such payment. (90 v. 17, § 16.) R. S. Sec. 2731-16.

Meaning of word "property."

SEC. 5348. The word "property" as used in this subdivision of this chapter includes real and personal estate, any form of interest therein, and annuities. (90 v. 17, § 17.) R. S. Sec. 2731-17.)

To refund direct inheritance tax paid under act of April 20, 1894 (91 v. 166), see 92 v. 374.

Direct inheritance tax: 91 v. 166.

CHAPTER TWENTY-SEVEN.

LEVYING TAXES.

SECTION	STATE TAXES.	SECTION
5626.	Rates of state taxes.	7926. Ohio university fund.
5626.	Notice thereof to county auditor.	7926. Ohio normal school fund.
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Rates of state taxes.

SEC. 5625. Taxes, for state purposes, shall be levied, annually, on each dollar of valuation of taxable property, in the sum or sums, provided by law. (R. S. Sec. 2820.)

Notice thereof to county auditors.

SEC. 5626. The auditor of state, on or before the first Monday of June, annually, shall give notice to each county auditor of the rate required by law to be levied for the payment of the principal and interest of the public debt, for the support of common schools, for defraying the expenses of the state, and for the other purposes prescribed by law. Such rate shall be levied by the county auditor on the taxable property of each county on the duplicate, and be entered in one column and denominated "state taxes." (R. S. Sec. 2821.)

Funds in the state treasury arising from taxes levied and collected for "the expenses of the state" must be applied to paying claims for repairing buildings of the Ohio university, if the legislature has appropriated funds for such purpose: State, ex rel., v. Oglevee, 37 O. S. 1.

A tax levied under a former statute (59 v. 9; 60 v. 18; 61 v. 15) for the relief of the families of soldiers was held to be a state tax within the meaning of a former statute, which exempted certain lands of the Ohio university "from state taxes"; State, ex rel., v. Auditor, 15 O. S. 482.

That a tax levied for paying bounties to volunteers is constitutional, see Cass Township v. Dillon, 16 O. S. 38.

The duty of a county auditor to place on the tax lists of the county the rate required by law for state purposes, as certified to him by the auditor of state, and to enter the same in one column denominated "state taxes," is a ministerial duty specifically enjoined by law, the performance of which may be required by mandamus. State v. Roose, 90 O. S. 345.

Taxes for state purposes can be levied only by the general assembly, and the budget commissioners of the counties have no authority to change such levy. State v. Edmondson, 89 O. S. 93.

State highway improvement fund; tax levy.

SEC. 1230. There shall be levied annually a tax of three-tenths of one mill on all the taxable property within the state to be collected as are other taxes due the state, and the proceeds of which shall constitute the state highway improvement fund. (106 v. 644, § 223.)

Levy shall be in addition to all others.

SEC. 1231-2. The annual levy of three-tenths of one mill provided for by this act shall be in addition to all other levies made for any purpose or purposes, and the same shall not be construed as limited, restricted or decreased in amount or otherwise by any existing law or laws. (106 v. 645, § 228.)

Tax levy for state common school fund and irreducible debt fund.

SEC. 7575. For the purpose of affording the advantages of a free education to all the youth of the state, there shall be levied annually a tax of fifty-five thousandths of one mill on the grand list of the taxable property of the state, to be collected as are other state taxes and the proceeds of which shall constitute "the state common school fund," and for the payment of interest on the irreducible or trust fund debt for school purposes, twenty-five ten thousandths of one mill, such fund to be styled "the sinking fund." (105 v. 5.)

Levy for Miami university.

SEC. 7924. For the purpose of affording support to the Miami university, there shall be levied annually a tax on the grand list of the taxable property of the state, which tax

shall be collected in the same manner as other state taxes and the proceeds of which shall constitute "the Miami university fund." The rate of such levy shall be eighty-five ten thousandths of one mill upon each dollar of valuation of such property. The sum raised by such levy, or its equivalent in money, in case the levy is abolished, shall be the sum total received either from the proceeds of the levy or from appropriations for the support of the college of liberal arts, and shall be used only for the purposes set forth in the next preceding section. This levy shall not hereafter be increased. But this shall not prevent such appropriations from time to time as may be necessary for apparatus for university purposes, exclusive of buildings. (102 v. 266.)

Levy for Ohio university.

SEC. 7925. For the purpose of affording support to the Ohio university, there shall be levied annually a tax on the grand list of the taxable property of the state which shall be collected in the same manner as other state taxes and the proceeds of which shall constitute "the Ohio university fund." The rate of such levy shall be eighty-five ten thousandths of one mill upon each dollar of valuation of such taxable property. The sum raised by means of such levy, or its equivalent in money, in case the levy is abolished, shall be the sum total received, either from the proceeds of the levy or from appropriations for the support of the college of liberal arts, and shall be used only for the purposes set forth in section seventy-nine hundred and twenty-three. This levy shall not hereafter be increased. But this shall not prevent such appropriations from time to time as may be necessary for apparatus for university purposes, exclusive of buildings.

Under the act of 1804, establishing the Ohio university, and the act of 1805, amendatory thereto, the lands of the university, on lease, are subject to revaluation: *McVey v. Ohio University*, 11 O. 134.

The board of trustees of the Ohio university have power to lay out into lots the portion of land marked as "commons" on the town plat of Athens, and dispose thereof for the benefit of the University: *Crippen v. President and Trustees of Ohio University*, 12 O. 96

Levy for Ohio university normal school.

SEC. 7926. For the purpose of affording support to the state normal school or college, in connection with the Ohio university, there shall be levied annually a tax on the grand list of the taxable property of the state, which shall be collected in the same manner as other state taxes and the proceeds of which shall constitute "the Ohio normal school fund." The rate of such levy shall be five one thousandths of one mill upon each dollar of valuation as such taxable property, unless otherwise designated by the general assembly. Nothing in this section shall prevent such normal school from securing such additional appropriations as the general assembly sees fit to make from time to time for the support and equipment of the school. (102 v. 266.)

Levy for Miami university normal school.

SEC. 7927. For the purpose of affording support to the state normal school or college, in connection with the Miami university, there shall be levied annually a tax on the grand list of the taxable property of this state, which shall be collected in the same manner as other state taxes and the proceeds of which shall constitute "the Miami normal school fund." The rate of such levy shall be thirty-five ten thousandths of one mill upon each dollar of valuation of such taxable property, unless otherwise designated by the general assembly. Nothing in this section shall prevent such normal school from securing such additional appropriations as the general assembly sees fit to make from time to time for the support and equipment of the school. (102 v. 266.)

Levy for Bowling Green normal school.

SEC. 7927-a. For the purpose of affording support to the state normal school located at Bowling Green, Ohio, there shall be levied annually a tax on the grand list of the taxable property of the state, which shall be collected in the same manner as other state taxes and the proceeds of which shall constitute "the Bowling Green normal school fund." The rate of such levy shall be five one thousandths of one mill upon each dollar of valuation as such taxable property, unless otherwise designated by the general assembly. Nothing in this section shall prevent such normal school from securing such additional appropriations as the general assembly sees fit to make from time to time for the support and equipment of the school. (103 v. 842.)

Levy for Kent normal school.

SEC. 7927-b. For the purpose of affording support to the state normal school located at Kent, Ohio, there shall be levied annually a tax on the grand list of the taxable property of the state which shall be collected in the same manner as other state taxes and the proceeds of which shall constitute "the Kent normal school fund." The rate of such

levy shall be five one thousandths of one mill upon each dollar of valuation as such taxable property, unless otherwise designated by the general assembly. Nothing in this section shall prevent such normal school from securing such additional appropriations as the general assembly sees fit to make from time to time for the support and equipment of the school. (103 v. 842.)

Levy for Ohio state university.

SEC. 7929. For the purpose of affording free the advantages to the youth of the state of a higher, technical, liberal, professional, agricultural, graduate and industrial education, including manual training, there shall be levied annually a tax on the grand list of the taxable property of the state, which shall be collected in the same manner as other state taxes and the proceeds of which shall constitute "the Ohio state university fund." There shall be levied annually for that purpose five hundred and thirty-five ten thousandths of one mill upon each dollar of valuation of such taxable property or its equivalent in money should such levy be abolished. Nothing herein shall prevent the Ohio state university from securing any appropriations that the general assembly sees fit to grant for the purposes herein set forth. The Ohio State university never shall maintain a normal school, but may establish a teacher's college of professional grade. Nothing in this section shall prevent the board of trustees from charging incidental expense fees and also reasonable tuition fees for professional education. (102 v. 266.)

Levy for Wilberforce university.

SEC. 7986. For the purpose of carrying out the provisions of this subdivision of this chapter, there shall be levied annually a tax on the grand list of taxable property of the state, which shall be collected in a like manner as other state taxes, and the proceeds of which will constitute "the fund of the combined normal and industrial department at Wilberforce university." The rate of such levy shall be designated by the general assembly at least once in two years. If it fails to designate the rate for any year, for the fund of the "combined normal and industrial department of Wilberforce university" such levy shall be thirty-five ten thousandths of one mill upon each dollar valuation of such taxable property. This shall be paid to the treasurer of the normal and industrial department at Wilberforce university in accordance with the provisions hereof. All revenue arising from tuition, sales of products, or otherwise under the aforesaid department, shall be applied by its board of trustees to defray its expenses, or to increase its efficiency, a strict account of which shall be kept by the department board, and accompany the report to the governor. (102 v. 266.)

CHAPTER TWENTY-EIGHT.

LEVYING TAXES. (Continued.)

SECTION	COUNTY TAXES.	SECTION	Powers of county commissioners
5627.	Commissioners to determine annually amount to be levied, etc.	5638.	limited.
5629.	Special levy for certain buildings, if destroyed.	5639-1.	Submission to vote after passage of resolution; conduct of election; publication.
5629-1.	Repair of public buildings.	5640-1.	Ballot; more than one question may be submitted.
5630.	Annual levy for county purposes.	5641-1.	Certificate of result.
5630-1.	Deficiencies, special assessments.	5642-1.	Bonds to be issued and tax levied, when.
5631.	Commissioners may levy tax for hospital for insane.	5643.	Condemned bridges, tax levy for repair of.
5632.	Commissioners may borrow money for same.	5644.	May anticipate levy and issue bonds.
5633.	May issue bonds therefor.	7419.	Tax levy for road repairs.
5634.	Tax levy for same.	7420.	Exception.
5637.	Tax levy for judicial and court fund.	7421.	Surplus tax, how disposed of.

The levy of county taxes for certain purposes is authorized by the following sections of the General Code:

- 1177-1. (106 v., 124.) Experiment farm.
- 1222. (106 v., 640, Sec. 215.) Road fund. County's proportion.
- 1223. (106 v., 660, No. 216.) Road bonds.
- 1671. Detention home.
- 1683-9. (103 v., 879.) Mother's pension.
- 2034. Longview asylum; Hamilton County.
- 2242. Convict labor.
- 2434. Land for and erection of detention home; additional land for infirmary or children's home.
- 2439. Interest and redemption of bonds.
- 2440. Auditor shall make such levy, when.
- 2453. Soldiers' monuments.
- 2456. Libraries.
- 2488. County's proportion free turnpike tax.
- 2529. Poor fund.
- 2530. Additional poor funds.
- 2936. Soldiers' relief.
- 2942. Soldiers' and sailors' relief fund.
- 2969. Needy blind relief fund.
- 3063. Memorial building fund.
- 3068. Memorial building, care of.
- 3078. Children's homes.
- 3092. Destitute children, support of.
- 3120. District children's homes.
- 3123. Support of children's homes.
- 3130. County hospitals.
- 3133. Support of county hospitals.
- 3138-2. Hospitals, county, aid for.
- 3141. (103 v., 492.) Tuberculosis hospital; support of.
- 3152. (103 v., 494.) Tuberculosis hospitals.
- 4139. Workhouses.
- 4146. Same.
- 4149. Maintenance of workhouse.
- 4821. Election officers, expenses of.
- 4991. Expenses, primary elections.
- 5054. Elections, expenses of.
- 6505. Ditch fund.
- 6602. County sewers.
- 6742. Drift removal.
- 6912-1. (106 v., 492.) To retain bonds.
- 6926. (106 v., 603, Sec. 105.) Road improvement fund.
- 6927. (106 v., 603, Sec. 106.) Townships, proportion of costs.
- 6929. (106 v., 603, Sec. 108.) Interest and sinking funds.

- 6956-1. (106 v., Sec. 238.) Road repair fund.
- 7129-1. (106 v., 201.) Maintenance roads in former districts.
- 7405-4. (106 v., 603, Sec. 108.) Interest and sinking funds.
- 7405. Appropriation of toll road.
- 7406. Same.
- 7571. Bridges, purchase of.
- 9266. Toll roads; purchase of.
- 9269. Refunding road bonds.
- 9894. Agricultural fairs, encouragement of.
- 14833. Tax for soldiers' monuments.
- 14857. Bounties, reenlisted veteran volunteers.

Commissioners to determine annually amount to be levied, etc.

SEC. 5627. The county commissioners, at their March or June session, annually, shall determine the amount to be raised for ordinary county purposes, public buildings, the support of the poor, interest and principal of the public debt, and for road and bridge purposes. They shall specifically set forth in the record of their proceedings the amount to be raised for each of such purposes. (R. S. Sec. 2822.)

The furnishing of an armory and the maintenance thereof for a state militia or a company thereof is not an expense created either for "ordinary county purposes" or for "county buildings"; State, ex rel., v. Brinkman, 7 O. C. C. 165, 3 O. C. D. 710.

Special levy for certain buildings, if destroyed.

SEC. 5629. If a county infirmary building or children's home building, built or in process of construction, is wholly or partly destroyed by fire, or other casualty, and such county is without sufficient funds applicable to the purpose with which to rebuild or repair such building, the commissioners thereof, at a regular or called session, may levy a tax that will produce the sum required for such purpose, not exceeding, in any case, ten thousand dollars. If the commissioners deem it advisable, they may anticipate the collection of such special tax by borrowing, not exceeding the amount so levied, at a rate of interest not exceeding seven per cent. per annum, payable semi-annually, and may issue notes or bonds therefor, payable when the tax is collected. (R. S. Sec. 2823.)

Tax levy for repair of public building.

SEC. 5629-1. If any public building in any county, township or municipality in this state, erected from funds raised by general taxation, be condemned, by the proper officials, as unsanitary or unfit for the purposes for which it was erected, and such county, township or municipality is without the necessary funds to make said building sanitary and fit for the purposes for which it was built, the proper officials of said county, township or municipality, at a regular or called meeting, shall levy a tax that will produce the sum required to remedy the defects in said building, not to exceed in any case five thousand dollars. Provided, however, such tax shall be subject to all limitations upon interior rate, aggregate amount, maximum rate and combined maximum rate provided by law. If the officials deem it advisable they may anticipate the collection of such special tax by borrowing not exceeding the amount so levied at a rate of interest not exceeding 6 per cent., payable semi-annually, and may issue notes or bonds therefor, payable when the tax is collected. (103 v. 488.)

Annual levy for county purposes.

SEC. 5630. The commissioners of any county, at their June session, annually, may levy not to exceed three mills on each dollar valuation of taxable property within the county, for county purposes other than for roads, bridges, county buildings, sites therefor, and the purchase of lands for infirmary purposes. For the purpose of building county buildings, purchasing sites therefor, and lands for infirmary purposes, they may levy not to exceed two mills on such valuation. (R. S. Sec. 2823.)

An earlier form of this statute which fixed a rate for Lucas county different from that fixed for other counties was unconstitutional as to Lucas county: Pump v. Lucas County, 69 O. S. 448.

The fact that the levy which it was sought to resist had not been declared to be unconstitutional at the time at which it was made, did not render such levy valid, at least if contracts had not been made in reliance thereon (the levy being under a statute applicable to Lucas county specially): Kirkley v. Parker, 6 O. C. C. (N.S.) 371, 17 O. C. D. 334 [affirmed, without report, Parker v. Kirkley, 75 O. S. 599.]

An earlier form of this section which fixed the limit of taxation for counties of different classes according to the population of the counties, was held to be of doubtful constitutionality, but was not declared to be unconstitutional in Yost v. Brewing Co., 20 O. C. C. 26, 10 O. C. D. 693 [affirmed, without report, Brewing Co. v. Yost, 63 O. S. 563.]

Tax levy to cover deficiency of special assessments.

SEC. 5630-1. Bonds issued by county commissioners in the manner provided by law in anticipation of the collection of special assessments levied against the property abutting upon a proposed improvement or to be benefited thereby, or in anticipation of the collection of taxes upon the taxable property of any township, or townships, of the said county within which such improvement is to be made, shall be full, general obligations of such county, for the payment of the principal and interest of which, when due, the full faith, credit and revenues of such county shall be pledged. The county commissioners shall, prior to the issuance of the bonds above mentioned, provide for the levying of a tax upon all the taxable property of the county to cover any deficiency in the payment or collection of such special assessments or township tax. (106 v. 495.)

Commissioners may levy tax for hospital for insane.

SEC. 5631. The commissioners of any county owning, or wholly or partly maintaining, a hospital for the care of the insane, at the June session, annually, may levy a tax, not exceeding three-tenths of one mill, on the taxable property of such county, for the support of such hospital, the payment for lands purchased or acquired for the use thereof, and for enlargements, additions, or other improvements thereto. (97 v. 73, § 1.) R. S. Sec. 2823-1.

Commissioners may borrow money for same.

SEC. 5632. The commissioners of any county owning, or wholly or partly maintaining, a hospital for the care of the insane, may borrow money, not exceeding one hundred and fifty thousand dollars, for enlarging, changing or adding to such hospital, or making other improvements, which the trustees or directors in charge thereof decide to be necessary. (97 v. 74, § 1.) R. S. Sec. 2823-3.

May issue bonds therefor.

SEC. 5633. The county commissioners, making such loan, may issue the bonds of such county payable in not more than fifty years and redeemable after twenty-five years from their date with interest, evidenced by coupons, not exceeding five per cent., payable semi-annually. Such bonds shall be known as "county insane hospital improvement bonds," shall be signed by the commissioners and countersigned by the auditor. The commissioners from time to time, upon request of such directors or trustees, shall sell so many of such bonds as are required for the purposes of their issue, and deposit the proceeds thereof with the treasurer of the county to the credit of the hospital. In selling bonds the commissioners shall be governed by the general provisions of law applicable to the sale of bonds. (97 v. 74, § 2.) R. S. Sec. 2823-4.

Tax levy for same.

SEC. 5634. The county commissioners, annually, at the June session, shall levy the amount of taxes required to pay the interest on such bonds and create a sinking fund for the redemption thereof at maturity. All taxes levied and collected under this section shall be applied exclusively to the purposes for which they were issued. (97 v. 74, § 3.) R. S. Sec. 2823-5.

Tax levy for judicial and court fund.

SEC. 5637. The county commissioners, at their June session, annually, may levy on each dollar of valuation of taxable property within their county, for the purpose of creating a judicial and court fund, as follows: In a county where the amount of such taxable property does not exceed three million dollars, not to exceed two mills; where the amount exceeds three million dollars and does not exceed five million dollars, one and five-tenths mills; where the amount exceeds five million dollars and does not exceed eight million dollars, one and two-tenths mills; where the amount exceeds eight million dollars and does not exceed twelve million dollars, one mill; where the amount exceeds twelve million dollars and does not exceed sixteen million dollars, eight-tenths of a mill; where the amount exceeds sixteen million dollars and does not exceed twenty-six million dollars, six-tenths of a mill; where the amount exceeds twenty-six million dollars and does not exceed seventy-five million dollars, four-tenths of a mill; where the amount exceeds seventy-five million dollars and does not exceed one hundred million dollars, two-tenths of a mill; where the amount exceeds one hundred million dollars and does not exceed one hundred and fifty million dollars, one-tenth of a mill; where the amount exceeds one hundred and fifty million dollars and does not exceed two hundred million dollars, one-

twentieth of a mill; where the amount exceeds two hundred million dollars, one-fortieth of a mill. Such fund shall be expended for the payment of all the expenses of the various courts of the county. In case such fund should become inadequate to meet the expenses of the courts, the general or county fund shall be drawn upon for the payment of such expenses. (95 v. 465, §§ 1, 2.) R. S. Secs. 2824-7, 2824-8.

Powers of county commissioners limited.

SEC. 5638. The county commissioners shall not levy a tax, appropriate money or issue bonds for the purpose of building county buildings, purchasing sites therefor, or for land for infirmaries purposes, the expenses of which will exceed \$15,000.00, except in case of casualty, and as hereinafter provided; or for building a county bridge, the expense of which will exceed \$18,000.00, except in case of casualty, and as hereinafter provided; or enlarge, repair, improve, or rebuild a public county building, the entire cost of which expenditure will exceed \$10,000.00; without first submitting to the voters of the county, the question as to the policy of making such expenditure. (R. S. Sec. 2825.)

See G. C. § 2434.

This section is said not to be repealed or amended by the statutes, with reference to the inspection of public buildings (G. C. § 4648 et seq.), and the county commissioners are not required to comply with the orders of such examiners; and if the proposed repairs, enlargement and improvement of an old courthouse amount in effect to building a new one, involving the expenditure of more than ten thousand dollars, such action is within this section and must be submitted to popular vote: State, ex rel., v. Commissioners, 5 O. N. P. 260, 7 O. D. (N. P.) 34.

If an old bridge has become unsafe by decay, the construction of a new bridge cannot be regarded as the repairing of the old one; and if the expense of such construction exceed the statutory limitation, the question as to the policy of building such bridge must be submitted to popular vote: Commissioners v. Croweg, 24 O. S. 492.

When special statutes were held to be valid upon questions of this sort, the general statute was said to be inapplicable: State, ex rel., v. Commissioners, 3 O. C. C. 403, 2 O. C. D. 227.

Statutes applicable to specific counties are now held to be invalid: State, ex rel., v. Davis, 55 O. S. 1.

Submission of question to vote after passage of resolution; how election conducted; notice by publication.

SEC. 5639-1. When the board of county commissioners desires to submit such question to the voters of the county, it shall pass and enter upon its minutes a resolution declaring the necessity of such expenditure, fixing the amount of bonds to be issued, if any, in connection therewith, and fixing the date upon which the question of making any such expenditure shall be so submitted, and shall cause a copy of such resolution to be certified to the deputy state supervisors of elections of the county; and thereupon the deputy state supervisors shall prepare the ballot and make other necessary arrangements for the submission of the question to the voters of the county at the time fixed in such resolution.

The election shall be held at the regular places for voting in such county and shall be conducted, canvassed, and certified in the same manner, except as otherwise provided by law, as for the election of county officers. The county commissioners shall give fifteen days' notice of the submission of any such question by publication in at least two newspapers of opposite politics having a general circulation in said county, which notice shall be published once a week for two consecutive weeks, and shall state the amount of such proposed expenditure, the amount of the bonds, if any, to be issued in connection therewith, the purpose for which such expenditure is to be made, and the time of holding such election. (106 v. 16.)

Ballot; more than one question may be submitted.

SEC. 5640-1. The ballots provided by the deputy state supervisors shall have printed upon the same the words, "In favor of the expenditure of \$..... for the purpose of" and "Against the expenditure of \$..... for the purpose of" said blanks to be filled with the amount proposed to be expended and the purpose for which said money is to be expended. If the board of county commissioners desire to submit upon the same ballot more than one question as to the expenditure of money for any of the purposes referred to in section 5638, the same may be done by proper resolution and notice, and by separately stating upon said ballot each proposition, as above provided. (102 v. 447.) Substituted for G. C. Sec. 5640, original numbering.

Certificate of result.

SEC. 5641-1. When the result of such election has been ascertained, the deputy state supervisors shall certify the same to the auditor of said county and he shall enter the same upon the records of the board of county commissioners. (102 v. 447.) Substituted for G. C. Sec. 5641, original numbering.

Bonds to be issued and tax levied, when.

SEC. 5642-1. If a majority of the votes so cast are against the proposed expenditure the board of county commissioners shall not assess a tax or issue bonds therefor. If a majority of the votes cast are in favor of the proposed expenditure, the board of county commissioners shall proceed to issue bonds in any sum not exceeding the amount stated upon said ballots, the proceeds of which shall be used exclusively for the purpose stated upon said ballot, and said board shall levy such amount of tax as may be necessary to pay the interest accruing on said bonds and to redeem them at maturity. (102 v. 447.) Substituted for G. C. Sec. 5642, original numbering.

The term "majority" as used in this section means the same whether the election is a special election or an annual election; and in either case, it means a majority of the vote cast upon the proposition; even if at a regular election such vote is not more than half of the total vote cast for the candidates or upon all questions: State, ex rel., v. Amlin, 13 O. D. (N. P.) 334.

Condemned bridges, tax levy for repair of.

SEC. 5643. If an important bridge, belonging to or maintained by any county, becomes dangerous to public travel, by decay or otherwise and is condemned for public travel by the commissioners of such county, and the repairs thereof, or the building of a new bridge in place thereof, is deemed by them necessary for the public accommodation, the commissioners, without first submitting the question to the voters of the county, may levy a tax for either of such purposes in an amount not to exceed in any one year two-tenths of one mill for every dollar of taxable property upon the tax duplicate of said county. (R. S. Sec. 2825.)

Contracts for the restoration of bridges under this section are controlled by G. C. § 2414: State, ex rel., v. Commissioners, 14 O. D. (N. P.) 228.

May anticipate levy and issue bonds.

SEC. 5644. If the county commissioners deem it necessary or advisable, they may anticipate the collection of such special tax by borrowing a sum not exceeding the amount so levied, at a rate of interest not exceeding six per cent. per annum, payable semi-annually, and may issue notes or bonds therefor, payable when said tax is collected, or the commissioners, without such submission of the question, may proceed under the authority conferred by law to borrow such sums of money as is necessary for either of the purposes before mentioned, and issue bonds therefor. For the payment of the principal and interest on such bonds, they shall annually levy a tax as provided by law. (R. S. Sec. 2825.)

Tax levy for road repairs.

SEC. 7419. When one or more of the principal highways of a county or part thereof, have been destroyed or damaged by freshet, landslide, wear of watercourses, or other casualty, or, by reason of the large amount of traffic thereon or from neglect or inattention to the repair thereof, have become unfit for travel or cause difficulty, danger or delay to teams passing thereon, and the commissioners of such county are satisfied that the ordinary levies authorized by law for such purposes will be inadequate to provide money necessary to repair such damages or to remove obstructions from, or to make the changes or repairs in, such road or roads as are rendered necessary from the causes herein enumerated, they may annually thereafter levy a tax at their June session, not exceeding five mills upon the dollar upon all taxable property of the county, to be expended under their direction or by the employment of labor and the purchase of materials in such manner as may seem to them most advantageous to the interest of the county, for the construction, reconstruction or repair and maintenance of such road or roads or part thereof. (R. S. Sec. 4919.)

The council of a municipal corporation cannot control any part of the taxes levied under this section: Lima v. McBride, 34 O. S. 388.

The tax provided for in this section is to be levied upon townships, which are made independent road districts, as well as upon the rest of the county: Bennehoff v. Mansfield, 2 O. N. P. 225, 2 O. D. (N. P.) 404.

For the application of this section, see State v. Lewis, 13 O. D. (N. P.) 188.

For the extent of the power of a municipal corporation or township, to control any part of this fund, see G. C. § 7421.

Exempted specifically from operation of Smith Law by Sec. 5649-4.

The money realized by the levy of taxes under the provisions of section 7419, General Code, constitutes an emergency fund to be used by the county commissioners to "repair the damages" to highways arising from certain causes or to "remove obstructions from, or to make changes or repairs" therein made necessary by other causes, and they are not authorized to use the same for the construction of a new road or to contribute to one proposed by other authority.

State v. Raub, 26, Dec. 227 (Affirmed on appeal, Marion Court of Appeals).

Exception.

SEC. 7420. The next preceding section shall not authorize the commissioners to refuse to make a levy for a road fund under the provisions of law relating to levies for road and bridge purposes. (R. S. Sec. 4919.)

How surplus of tax to be disposed of.

SEC. 7421. All money assessed and collected under the provisions of section seventy-four hundred and nineteen, which remains in the hands of the county treasurer, unexpended and unappropriated, for a period of six months after the annual September settlement for the fiscal year during which the tax was collected, shall be paid to the treasurer of the township or municipal corporation from which it was collected, and be expended on the public roads, under the direction of the trustees of the proper township or municipal corporation, in such manner as seems to them most advantageous to the interest of the township or corporation, for the construction, reconstruction, or repair of roads, and in building or repairing bridges. (R. S. Sec. 4921.)

This section specifies the only part of the taxes levied for road purposes which the council may control: *Lima v. McBride*, 34 O. S. 338.

CHAPTER TWENTY-NINE.

LEVYING TAXES. (Continued.)

TOWNSHIP TAXES.		SECTION	
SECTION		5649.	Payment of road tax, by labor; disposition of road taxes, by county treasurer.
5646.	Township tax, when and how made.		
5647.	Tax for "poor relief."		
5648.	Township liabilities for the relief of the poor.		

Township levies for certain specified purposes are authorized by the following sections of the General Code:

- 1222. (106 v., 640, Sec. 215.) Road funds; Township's proportion.
- 3255. In case of change of lines.
- 3256. How assessment made.
- 3260. Township hall.
- 3298-1. (106 v., 589, Sec. 60.) Road improvement.
- 3298-13. To pay bonds.
- 3298-18. (106 v., 647, Sec. 239.) Road repair fund.
- 3298-20. (106 v., 653, Sec. 257.) Road materials, gravel, etc.
- 3285. Hearse and burial vault.
- 3292. Drilling oil or gas wells.
- 3396. Town hall.
- 3401. Public building; joint townships and corporation.
- 3404. Public libraries.
- 3407. Private libraries; aid of.
- 3410-12. Township soldiers' and sailors' memorial building.
- 3411. Free public hospital.
- 3423. Township parks.
- 3436. Lighting; streets and public ways.
- 3439. Maintenance of same.
- 3444. Cemeteries.
- 3453. Enclosing burial grounds.
- 3455. Additional cemetery grounds.
- 3461. Buildings upon cemetery grounds.
- 5825. Ground hog fund.
- 5944. Noxious weeds.
- 6509. Ditch fund.
- 6912-1. (106 v., 492.) To retire bonds.
- 7669. High school, joint district.
- 7673. Municipal universities, maintenance of.
- 7899. Normal schools.

TOWNSHIP TAXES.

Township tax, when and how made.

SEC. 5646. The trustees of each township, on or before the fifteenth day of May, annually, shall determine the amount of taxes necessary for all township purposes, and certify it to the county auditor. The county auditor shall levy, annually, for township purposes, including the relief of the poor, but not including the support of common schools, or the payment of the interest and principal of the debts of the township, such rates of taxes as the trustees of the respective townships certify to him to be necessary, not exceeding one mill on each dollar of the taxable valuation of the property of the township, which does not exceed two hundred thousand dollars, eight-tenths of one mill on each dollar of such taxable valuation exceeding two hundred thousand dollars, and not exceeding three hundred thousand dollars, one-half of one mill on each dollar of such taxable valuation exceeding three hundred thousand dollars, and not exceeding five hundred thousand dollars, four-tenths of a mill on each dollar of such taxable valuation exceeding five hundred thousand dollars, and not exceeding eight hundred thousand dollars, one-fourth of one mill on each dollar of such taxable valuation exceeding eight hundred thousand dollars, and for the payment of the interest and principal of the debts

of the township, such sum as the trustees may determine is necessary for that purpose. (R. S. Sec. 2827.)

For limitations upon the tax rate, see G. C. § 5649-2.

This section provides the limit of taxation for general purposes based upon the taxable valuation of the property in the township; and not for the rate of taxation for each specific piece of property. Accordingly the total amount which may be raised in any township is to be determined by estimating the amount which could be raised by one mill on the first two hundred thousand dollars of valuation, eight-tenths of a mill on the next one hundred thousand dollars of valuation, one-half on the next two hundred thousand dollars of valuation and so on. The aggregate amount of taxation thus obtained is to be apportioned uniformly upon the property within the township: Ward v. Railway, 3 O. N. P. 274, 4 O. D. (N.P.) 154.

Tax for "poor relief."

SEC. 5647. In counties where there are no county infirmaries, a township tax in addition to the tax provided in the next preceding section, and not to exceed one mill and five-tenths of a mill on each dollar of the taxable property of the township, may be levied for the relief of the poor, to be applied solely to that purpose. (R. S. Sec. 2827.)

For limitations upon the tax rate, see G. C. § 5649-2.

Cited to show that poor laws are laws of a general nature: State, ex rel., v. Bargus, 53 O. S. 94.

Township liabilities for the relief of the poor.

SEC. 5648. The trustees of any township which incurs liabilities for the relief of the poor, beyond the amount raised by the levy authorized by law, may make an additional levy, for the purpose of discharging such liabilities, not exceeding six-tenths of one mill on the dollar of the taxable property of such township. (R. S. Sec. 2828.)

Payment of road tax to county treasurer.

SEC. 5649. Any person charged with a road tax shall pay it in money to the county treasurer in like manner as other taxes are collected and paid. Road taxes paid to or collected by the county treasurer shall be paid over to the treasurer of the township or municipal corporation from which they were collected, and be expended on the public roads and in building and repairing bridges in the township and municipal corporation from which they were collected under the direction of the trustees of the proper township or council of such municipal corporation. All funds heretofore levied for road purposes and not expended, shall be expended by the trustees of the township or council of the municipal corporation from which the funds were collected as other taxes collected under the provisions of this title. (103 v. 489.) R. S. Sec. 2830.

CHAPTER THIRTY.

LEVYING TAXES. (Continued.)

SCHOOL TAXES.		SECTION
SECTION		7592.
7586.	Rate of taxation to be fixed by board.	Greater or less tax may be levied.
7587.	Levy to be divided into four funds.	7594. Certificate of levy to auditor.
7591.	Maximum levy.	7672. Annual budget.

The following sections of the General Code authorize Boards of Education to levy taxes for certain specified purposes:

- . 6510. Ditch assessment, school lands.
- 7622-7. Social center fund.
- 7628. Interest and redemption fund.
- 7630-1. Replacement of destroyed school houses.
- 7632. Library fund.
- 7633. Joint libraries.
- 7639. Library maintenance.
- 7641. Library associations.
- 7642. School libraries.
- 7739. Free text books.

Board of education to fix rate of taxation.

SEC. 7586. Each board of education, annually, at a regular or special meeting held between the third Monday in April and the first Monday in June, shall fix the rate of taxation necessary to be levied for all school purposes, after the state funds are exhausted. (98 v. 9.) R. S. Sec. 3958.

As the tuition fund is in the nature of a trust fund, for the benefit of each individual youth in the state, transfers from said fund, in the treasury of a school district to a building fund cannot be made except under provision and conditions provided for in Section 5655, General Code, for the purpose of reducing tax levy estimates at the annual meeting of the board.

The common pleas court has power, under Sections 2296-2302, General Code, to permit transfers "when no injury will result therefrom" but in view of the peculiar nature of the tuition fund, such action would be a rare possibility.—*Attorney General*, 1912, p. 1206.

This and the following sections authorize a levy made by the board of education upon property in the respective school districts, if the state funds are insufficient: Toledo, ex rel., v. Railway, 4 O. C. C. 113, 2 O. C. D. 450.

A board of education is not liable in its corporate capacity for damages, where, in excavating on its own lots for the erection of a school building, it wrongfully and negligently carries the excavation below the statutory depth of nine feet, thereby undermining and injuring the foundation and walls of a building of an adjoining owner: Board of Education v. Volk, 72 O. S. 469.

General Code, Sec. 3782, creating a liability against an "owner" or "possessor" of premises whereon such wrongful and unlawful excavation is made, does not apply to boards of education holding title to the lot or land being excavated, for school and school building purposes: Board of Education v. Volk, 72 O. S. 469.

In the absence of statutory authority, the board of education is not liable in its corporate capacity for an injury which results to a pupil, while attending a public school, although such board of education has been negligent in the discharge of its official duty in the erection and maintenance of a common school building: Finch v. Board of Education, 30 O. S. 37.

A municipal corporation is not liable for the negligence of the board of education in the construction and maintenance of a school building to a pupil attending such school, who is injured by reason of such negligence: Diehm v. Cincinnati, 25 O. S. 305.

"A notice, by a clerk of a board of education, of a tax voted by the board, to build a school house, delivered to the auditor on the 11th day of June, is sufficient authority to the auditor for carrying the tax into his duplicate." 11 Western Law Monthly, 589.

It is a general rule that the statutes, so far as they limit a time for the performance of an act by a public officer, for the public benefit, are merely directory, when time is not the essence of the thing to be done, unless there are negative words, and the act is valid if done afterwards.

Tuition from non-resident pupils is to be paid to the board of education, and placed in the contingent fund. A teacher has absolutely no authority to retain money received for tuition of non-resident pupils. *Attorney General Opinion*.

Levy to be divided into four funds.

SEC. 7587. Such levy shall be divided by the board of education into four funds: First, tuition fund; second, building fund; third, contingent fund; fourth, bonds, interest and sinking fund. A separate levy must be made for each fund. (98 v. 9.) R. S. 3958.

Maximum levy.

SEC. 7591. Except as hereinafter provided, the local tax levy for all school purposes shall not exceed twelve mills on the dollar of valuation of taxable property in any school district, and in city school districts shall not be less than six mills. Such levy shall not include any special levy for a specified purpose, provided for by a vote of the people. (98 v. 127.) R. S. Sec. 3959.

Section 5649-2, et seq., limit rate of taxation and repeal by implication existing conflicting statutes: *Rabe v. Canton Sch. Dist.* (B. of Ed.), 88 O. S. 403.
For limitations upon the tax rate, see G. C. Sec. 5649-2.

Greater tax may be levied.

SEC. 7592. A greater or less tax than is authorized above may be levied for any or all school purposes. Any board of education may make an additional annual levy of not more than five mills for any number of consecutive years not exceeding five, if the proposition to make such levy or levies has been submitted by the board, to a vote of the electors of the school district, under a resolution prescribing the time, place and nature of the proposition to be submitted, and approved by a majority of those voting on the proposition. (98 v. 127.) R. S. Sec. 3959.

Repealed by implication: *Rabe v. Canton Sch. Dist.*, 88 O. S. 403.

When a village board of education was authorized by electors under section 7592, General Code, to levy an additional tax of five mills for five years, such board may proceed to issue bonds without further authorization of the electors provided that the conditions of 7626 and 7679, General Code, with reference to the quality and nature of the bonds and the provisions of section 7629 with reference to the amount of the bonds and the procedure of the board be complied with.—*Attorney General*, 1911-12, p. 534.

Section 7629, General Code, still empowers the board of education to issue such amount of bonds without authority of the electors in any one year as does not exceed in the aggregate a tax of two mills for the year next preceding the issue. The limitation of the Smith law must be observed, however.—*Attorney General*, 1911-12, p. 1332.

The decision in the case of *Rabe et al. v. Board of Education*, does not in any way effect the rights of the Board of Education under Section 5656, General Code.—*Attorney General*, Opinion No. 326, 1914.

For limitations upon the tax rate, see G. C. Sec. 5649-2.

Amount of levy to be certified to county auditor.

SEC. 7594. The amount of the levy fixed by the boards of education under the next eight preceding sections, shall be certified to the county auditor, in writing, on or before the first Monday in June of each year by the boards of education, and on or before the first Monday in August of each year by the county commissioners when the levy is made by them, who shall assess the entire amount upon all the taxable property of the district, and enter it upon the tax duplicate of the county. The county treasurer shall collect it at the time and in the same manner as state and county taxes are collected, and pay it to treasurer of the district upon the warrant of the county auditor. (102 v. 277.) R. S. Sec. 3960.

The fact that the auditor has not apportioned the school fund does not give authority to the board of education to treat such fund as contingent, and to expend it in accordance with its discretion: *State, ex rel., v. Zeeb*, 9 O. C. C. 13.

Each apportionment is a separate transaction, and the fact that there was either a surplus or deficit in preceding years, cannot change the apportionment in question: *Saunders v. State, ex rel.*, 2 O. C. C. 476, 1 O. C. D. 596.

Estimate to maintain schools certified to county auditor in annual budget.

SEC. 7672. Boards of education exercising control for the purpose of taxation over territory within a rural or joint rural high school district shall determine by estimate the amount necessary for the maintenance of any rural or joint rural high school to which such territory belongs and shall certify such amount to the county auditor in the annual budget as provided in section 5649-3a. All funds derived from levies so made shall be kept separate and be paid out for the maintenance of the school for which they were made. (104 v. 225.) R. S. Sec. 4009-15.

When a joint school district is formed for high school purposes by a township school district and an adjoining village district, such district becomes one district and taxes for the support of the same must be borne by the respective joined districts in proportion to the total valuation of the property in each, notwithstanding the fact that the village district sends the most pupils and has the smallest valuation.—*Attorney General*, 1911-12, p. 1042.

CHAPTER THIRTY-ONE.

LEVYING TAXES. (Continued.)

MUNICIPAL TAXES.

SECTION	SECTION
3784. Powers of council to levy and collect taxes.	3786. When a greater tax may be levied; submission of question to vote.
3785. Maximum of municipal taxes allowable.	3795. Corporation taxes; how collected.
	4506. Tax for creating a sinking fund.

Municipalities are authorized by the following sections of the General Code to levy taxes for certain specified purposes, in addition to the taxes for general purposes:

- 1259. Water supply, public.
- 1259-1. (106 v., 461.) Same.
- 3413. Municipality exempt from hospital levy, when.
- 3748. Street sprinkling.
- 3821. Public improvements, corporation's part.
- 3837. Abutting property of corporation.
- 3953. Interest and redemption fund.
- 3977 et seq. Waterworks.
- 4013. Library bonds.
- 4019. Library associations.
- 4020. Free art galleries.
- 4021. Hospitals; free private.
- 4180. Hearse or vault in villages.
- 4205-3. Municipal pawn shops.
- 4360. Municipal waterworks plant.
- 4360. Municipal electric light plant.
- 4475. Sanitary plants, maintenance of.
- 4637. Sanitary police pension fund; maintenance of
- 5054. Expenses of elections.
- 7622-7. Social center fund.
- 7673. (104 v., 230.) Universities, village.
- 7908. (103 v., 472.) Universities, municipal.
- 7914. Universities, sinking funds.
- 8891. Grade crossings, elimination of.

Powers of council to levy and collect taxes.

SEC. 3784. Each municipal corporation shall have special powers, to be exercised as provided by law, to levy and collect taxes upon the real and personal property within the corporation for the purposes of paying the expenses of the corporation, constructing improvements authorized, and exercising the general and special powers conferred by law. (96 v. 26, Sec. 9; 96 v. 33, Sec. 32.)

The payment of interest upon public debts is a purpose for which a tax may be levied, and a corporation may be compelled by mandamus to levy such tax, notwithstanding that all the money which the corporation is able to raise by taxation is needed for its current expenses. *United States v. Kent*, 107 Fed. 190, 12 O. F. D. 422; *Kent v. United States*, 113 Fed. 232. 51 C. C. A. 189, 13 O. F. D. 135.

The legislature has a wide discretion in determining what purposes are of a public character for which taxation may be levied; and its determination will not be disregarded by the courts, unless manifestly erroneous. *State v. Trustees*, 20 O. S. 362; *Walker v. Cincinnati*, 21 O. S. 14.

If it clearly appears that the purpose for which taxation is authorized is not a local one, the grant of the power of taxation by the legislature is unauthorized and invalid. *Hubbard v. Fitzsimmons*, 57 O. S. 436.

A tax is to be distinguished from a charge of a license fee, the former being in exercise of the taxing power and the latter in exercise of the police power. *Pegg v. Columbus*, 80 O. S. 367.

Local assessments are levied for local purposes, and the owner of the property assessed receives a direct benefit to his property, increasing the value thereof as compensation for such assessment. Taxation is a power which is exercised for the general good of the community, the only recompense thereof being in the general peace, order and welfare of society. *Sessions v. Crunkilton*, 20 O. S. 349.

Maximum of municipal taxes allowable.

SEC. 3785. The aggregate of all taxes levied by a municipal corporation, exclusive of the levy for county and state purposes, for schools and schoolhouse purposes, for free public libraries and library buildings, for university and observatory purposes, for hospitals and for sinking fund and interest, on each dollar of valuation of taxable property in the corporation on the tax list, shall not exceed in any one year ten mills. (96 v. 33, Sec. 33.)

For the present limitations upon the tax rate in municipal corporations, see G. C. § 5649-2 et seq.

When greater tax may be levied; submission of question to vote.

SEC. 3786. A greater tax than that authorized herein may be levied by the council of a municipal corporation for any purpose for which corporation is authorized to levy taxes, if the proposition to make such additional levy is first submitted to a vote of the electors of the corporation, under an ordinance prescribing the time, place and manner of voting thereon, and approved by two-thirds of those voting on the proposition. (96 v. 33, Sec. 34.)

For the present limitations upon a tax rate in municipal corporations, see G. C. § 5649-2 et seq.

Corporation taxes; how collected.

SEC. 3795. The taxes of the corporation shall be collected by the county treasurer and paid into the treasury of the corporation in the same manner and under the same laws, rules and regulations as are prescribed for the collection and paying over of state and county taxes. The corporation treasurer shall keep a separate account with each fund for which taxes are assessed, which account shall be at all times open to public inspection. Unless expressly otherwise provided by law, all money collected or received on behalf of the corporation shall be promptly deposited in the corporation treasury in the appropriate fund, and the treasurer shall thereupon give notice of such deposit to the auditor or clerk. Unless otherwise provided by law, no money shall be drawn from the treasury except upon the warrant of the auditor or clerk pursuant to the appropriation by council. (96 v. 35, Sec. 41.)

A municipal corporation cannot pay a claim if sufficient funds have not been appropriated to pay it. *State v. Hoffman*, 25 O. S. 328.

Tax for creating a sinking fund.

SEC. 4506. Municipal corporations having outstanding bonds or funded debts shall, through their councils, and in addition to all other taxes authorized by law, levy and collect annually a tax upon all the real and personal property in the corporation sufficient to pay the interest and provide a sinking fund for the extinguishment of all bonds and funded debts and for the payment of all judgments final except in condemnation of property cases, and the taxes so raised shall be used for no other purpose whatever. (96 v. 54, Sec. 101.)

CHAPTER THIRTY-TWO.

LEVYING TAXES. (Continued.)

MISCELLANEOUS PROVISIONS.

SECTION

5650. Levy to pay bonds given for railroad subscription.
 5651. Assessing transient traders.
 5652. Additional tax on dogs.
 5653. Distribution of surplus sheep fund.
 5654. Transfer of surplus of special tax on loan.
 5656. Power to borrow to extend time of debt.
 5657. Power to exchange bonds.
 5658. Resolution as to such debts.
 5659. Levy to meet payment of bonds.
 5659-1. When 50% of tax collection enjoined or in litigation.

SECTION

5659-2. Application of money from bond issue.
 5660. Certificate; what to specify; filing and recording.
 5661. Exceptions thereto.
 5662. Reimbursement under unconstitutional act.
 5663. Bond issue for same.
 5664. Claims recoverable by action.
 5665. Use of county buildings.
 5666. Payments made under unconstitutional act.
 5667. Title to land and building confirmed in county commissioners.
 5668. Bonds may be issued and tax levied.
 5669. Disposition of surplus under liquor tax.

Levy to pay bonds for railroad subscription.

SEC. 5650. The lawful authorities of a county, city or township which have subscribed to the capital stock of a railroad company and have issued its bonds or other securities for the payment of such subscription, may levy or cause to be levied, annually, on the taxable property thereof, within five years next before the principal of such bonds, or other securities, are payable, if the market price of the stock of such railroad company is less than seventy-five per cent on its par value, such tax, not exceeding one mill on the dollar, as will be sufficient to balance the discount on the railroad stock held by such county, city or township, by the time such bonds may become due. The proceeds of such taxes shall form, with such stock, a sinking fund, and be invested in the purchase of the bonds issued by such county, city or township, or in other safe and productive securities, and be applied only to the payment of the bonds so issued. (R. S. Sec. 2831.)

Assessing transient traders.

SEC. 5651. When a return is made to the county auditor, under chapter three of this title, of the value of the stock of a transient trader, the auditor shall assess against him his proper proportion for one month, upon such valuation, of all taxes of the current year, and certify it to the county treasurer. On the first day of each succeeding month, as long as such trader remains within the county offering to sell or otherwise dispose of goods of any kind, the auditor shall make a like assessment and certificate. (R. S. Sec. 2832.)

Additional tax on dogs.

SEC. 5652. In addition to the proper tax on any valuation that is fixed upon dogs by the owners, which shall be included with the personal property valuation and taxed therewith, the auditor shall levy against the owner thereof one dollar on each male and spayed female dog, and two dollars on each unspayed female dog. The receipts from such tax shall constitute a special fund to be disposed of in the payment of sheep claims, as provided by law. (R. S. Sec. 2833.)

The provision of a former statute which made this additional tax on dogs a lien upon the real estate upon which they were harbored, was held to be an arbitrary and unreasonable exercise of the police power, not to be required by the general welfare of the community; and accordingly unconstitutional and void: *Mirick v. Gims*, 79 O. S. 174.

The act of April 27, 1896, requiring that owners of dogs in cities of the first class, first grade, shall pay a license fee of two dollars for each dog, or if not paid, that the dog shall be disposed of by the Cincinnati humane society, such law to be enforced by such society, is an act of general nature inasmuch as dogs are found in all parts of the state, and being made applicable to Cincinnati only, is therefore unconstitutional for lack of uniformity of operation: *Fagin v. Humane Society*, 6 O. N. P. 357, 9 O. D. (N. P.) 341.

Distribution of surplus sheep claims fund.

SEC. 5653. After paying all such sheep claims, at the June session of the county commissioners, if there remain more than one thousand dollars of such fund, the excess at such June session, shall be transferred and disposed as follows: in a county in which there

is a society for the prevention of cruelty to children and animals, incorporated and organized as provided by law, which has one or more agents appointed in pursuance of law, all such excess as the county commissioners deem necessary for the uses and purposes of such society by order of the commissioners and upon the warrant of the county auditor shall be paid to the treasurer of such society, and any surplus not so transferred shall be transferred to the county board of education fund at the direction of the county commissioners. (104 v. 145.) R. S. Sec. 2833.

Proceeds of special levies shall not be used for other purpose; transfer of surplus.

SEC. 5654. The proceeds of a special tax, loan or bond issue shall not be used for any other purpose than that for which the same was levied, issued or made, except as herein provided. When there is in the treasury of any city, village, county, township or school district a surplus of the proceeds of a special tax or of the proceeds of a loan or bond issue which cannot be used, or which is not needed for the purpose for which the tax was levied, or the loan made, or the bonds issued, all of such surplus shall be transferred immediately by the officer, board or council having charge of such surplus, to the sinking fund of such city, village, county, township or school district, and thereafter shall be subject to the uses of such sinking fund. (103 v. 521.) R. S. Sec. 2834.

This section provides for the transfer of the special funds raised under G. C. § 6489 to the general county fund: *Zimmerman v. Canfield*, 42 O. S. 462.

Power to borrow to extend time of debt.

SEC. 5656. The trustees of a township, the board of education of a school district and the commissioners of a county, for the purpose of extending the time of payment of any indebtedness, which from its limits of taxation such township, district or county is unable to pay at maturity, may borrow money or issue the bonds thereof, so as to change, but not increase the indebtedness in the amounts, for the length of time and at the rate of interest that said trustees, board or commissioners deem proper, not to exceed the rate of six per cent per annum, payable annually or semi-annually. (R. S. Sec. 2834a.)

Under Section 5656, General Code, the board of education is disjunctively authorized to issue bonds or "borrow money" for the purpose of funding valid existing and binding indebtedness under the limitations prescribed in Sections 5656 to 5658, General Code.

When teachers' services have been performed therefore, the board may issue notes to pay the same when it is unable to meet the same by reason of limits of taxation. *A. G. R. 1912, p. 1844.*

A county in which original turnpike and bridge bonds in the amount of twenty thousand dollars are soon to become due may refund said bonds under the provisions of sections 5656, G. C., et seq., and this may be done without regard to the fact that the tax rate in said county has reached the limit of fifteen mills. The levy to provide a sinking fund for said bonds so refunded is controlled by sections 5649-1 and 5649-1a, G. C., as amended and supplemented in 104 O. L., 12. *A. G. R. 1915, p. 2207.*

Under section 5656, General Code, the commissioners may borrow money or issue bonds to fund existing debts by extending the time but not increasing their amounts; and they may use this means to pay such outstanding warrants, legally issued and stamped "not paid for want of funds." They may not, however, "exchange" bonds for such warrants. *A. G. R. 1912, p. 1128.*

A county officer's salary may be said to be "an existing, valid and binding obligation against the county" within the meaning of sections 5656 and 5658 of the General Code so as to justify the borrowing of money by the county commissioners in order to meet the same, when the claim for such salary accrues at the end of each month.

Section 5656 of the General Code in providing that the commissioners "may borrow money 'or' issue bonds thereof" enables them to issue certificates of indebtedness or promissory notes.

Claims presented by benevolent institutions of the state, for clothing for inmates from the county may not be paid in the absence of appropriations for the purpose. Money may be borrowed for the purpose of paying the same however, under section 5656 of the General Code. *A. G. R. 1912, p. 1389.*

The power of the county commissioners to issue bonds for the purpose of funding existing indebtedness does not exist until all moneys in the general fund which may be devoted to the purposes of paying such indebtedness have become exhausted. *A. G. R. 1912, p. 1198.*

Power to exchange bonds.

SEC. 5657. When it appears to the trustees of a township, board of education of a school district or commissioners of a county, to be for the best interests of such township, school district or county to renew, refund or extend the time of payment of any bonded indebtedness which has not matured and thereby reduce the rate of interest thereon, they may issue, for that purpose, new bonds, and exchange the bonds with the holder or holders of such outstanding bonds if such holder or holders consent to make such exchange and to such reduction of interest. (R. S. Sec. 2834a.)

County commissioners are authorized by this section to issue new bonds and to exchange them for outstanding bonds, but they are not authorized to exchange them for the promissory notes or other evidences of the debt of the county: *Commissioners v. State*, 78 O. S. 287.

Resolution as to such debts.

SEC. 5658. No indebtedness of a township, school district or county shall be funded, refunded or extended unless such indebtedness is first determined to be an existing, valid and binding obligation of such township, school district or county by a formal resolution of the trustees, board of education or commissioners thereof, respectively. Such resolution shall state the amount of the existing indebtedness to be funded, refunded or extended, the aggregate amount of bonds to be issued therefor, their number and denomination, the date of their maturity, the rate of interest they shall bear and the place of payment of principal and interest. (R. S. Sec. 2834a.)

Levy to meet payment of bonds.

SEC. 5659. For the payment of the bonds issued under the next three preceding sections, the township trustees, board of education or county commissioners shall levy a tax, in addition to the amount otherwise authorized, each year during the period the bonds have to run sufficient in amount to pay the accruing interest and the bonds as they mature. (R. S. Sec. 2834a.)

Taxing districts authorized to issue bonds when 50% of tax collections is enjoined or in litigation.

SEC. 5659-1. All municipal corporations, the board of education of any district and the commissioners of any county, through their proper officers, shall have power to borrow money and to issue bonds in payment therefor, to provide funds, to meet the payment of current expenses and sinking fund indebtedness, when the collection of general taxes aggregating fifty per cent (50%) or more of the general tax duplicate, for any fiscal year, of their respective taxing districts, has been enjoined by any court or the collection of which is in litigation. The bonds so issued may be made to run for a term not to exceed ten years and shall not bear a greater rate of interest than six per cent (6%), nor be sold for less than par with accrued interest. All moneys received from the sale of bonds, as herein provided, shall become a part of the general fund of the taxing district wherein bonds are so issued, and shall be used for only such purposes as the enjoined or otherwise litigated collection of taxes were appropriated for. (106 v. 11.)

Application of money derived from bond issue.

SEC. 5659-2. All tax collections which are paid into the treasury of any taxing district, which have theretofore been enjoined or the collection of which has been in litigation, and for which deficit bonds have been issued, under authority of the preceding section, shall be turned over to the trustees of the sinking fund of said taxing district, to be applied toward the payment of the principal and interest of the deficit bonds so issued. (106 v. 11.)

Certificate, what to specify; filing and recording.

SEC. 5660. The commissioners of a county, the trustees of a township and the board of education of a school district, shall not enter into any contract, agreement or obligation involving the expenditure of money, or pass any resolution or order for the appropriation or expenditure of money, unless the auditor or clerk thereof, respectively, first certifies that the money required for the payment of such obligation or appropriation is in the treasury to the credit of the fund from which it is to be drawn, or has been levied and placed on the duplicate, and in process of collection and not appropriated for any other purpose; money to be derived from lawfully authorized bonds sold and in process of delivery shall, for the purpose of this section, be deemed in the treasury and in the appropriate fund. Such certificate shall be filed and forthwith recorded, and the sums so certified shall not thereafter be considered unappropriated until the county, township or board of education, is fully discharged from the contract, agreement or obligation, or as long as the order or resolution is in force. (R. S. Sec. 2834b.)

Provisions of this section do not apply to certain appointments and employment, see G. S. § 2413.

This section is valid and constitutional with reference to contracts by county commissioners: *State v. Fronizer*, 3 O. N. P. (N.S.) 303, 15 O. D. (N.P.) 613.

This section applies to every township; and a contract entered into without the certificate herein required is invalid: *Stone Co. v. Trustees*, 5 O. N. P. (N.S.) 573, 18 O. D. (N.P.) 136.

This section applies where the county commissioners have allowed a bill presented by the clerk for supplies; and it becomes necessary to appropriate money for the payment of such bill: *Printing Co. v. Highland County*, 10 O. D. (N.P.) 89.

Where no certificate of the clerk, that the funds requisite for the payment of a claim were in the treasury and unappropriated, was filed prior to the adoption of the resolution authorizing payment, as required by this section, the resolution is without effect and an injunction will lie against such payment: *Caldwell v. Marvin*, 8 O. N. P. (N.S.) 387.

Failure of the auditor or clerk to first certify that the money necessary to meet the expense of building a new schoolhouse is in the treasury to the credit of the fund from which it is

to be drawn, or has been levied and is in process of collection and has not been appropriated for any other purpose, renders the contract void under G. C. § 3806: *McAlexander v. Haviland School District*, 7 O. N. P. (N.S.) 590, 19 O. D. (N.P.) 89.

This section applies to an order to pay a claim for compensation for services as an assistant assessor: *Hirsch v. Hamilton County*, 12 O. D. (N.P.) 681.

This section is mandatory and unless it is complied with the county commissioners cannot make a valid contract: *State, ex rel., v. Commissioners*, 19 O. C. C. 627, 10 O. C. D. 532; *North v. Commissioners*, 10 O. C. C. (N.S.) 462, 20 O. C. D. 145; *Stolz v. Selz*, 12 O. D. (N.P.) 655; *State, ex rel., v. Fronizer*, 2 O. N. P. (N.S.) 373, 15 O. D. (N.P.) 1.

A contract between county commissioners and one who undertakes to pike a county highway is invalid, where no record of the meeting of the commissioners was made, and no auditor's certificate was filed or recorded, as required by this section; such a contract cannot be enforced against the county; nor can an equitable accounting be granted for the labor and materials expended in improving the road: *North v. Commissioners*, 10 O. C. C. (N.S.) 462, 20 O. C. D. 145 [affirming *North v. Commissioners*, 6 O. N. P. (N.S.) 519, 17 O. D. (N.P.) 97, 4 O. L. R. 512.]

General Code § 2921, which authorizes a prosecuting attorney to bring action to recover back money of the county which has been misapplied, or illegally drawn from the county treasury, does not authorize the recovery back of money paid on a county commissioners' bridge contract fully executed but rendered void by force of this section, because of the lack through inadvertence, of a certificate by the county auditor that the money is in the treasury to the credit of the fund, or has been levied and is in process of collection, there being no claim of unfairness or fraud in the making, or fraud or extortion in the execution of such contract for such work, nor any claim of effort to put the contractor in statu quo by a return of the bridge or otherwise, the same having been accepted by the board of commissioners and incorporated as part of the public highway: *State, ex rel., v. Fronizer*, 77 O. S. 7 [affirming *State, ex rel., v. Fronizer*, 8 O. C. C. (N.S.) 216, 18 O. C. D. 709, which affirmed *State ex rel., v. Fronizer*, 3 O. N. P. (N.S.) 303, 15 O. D. (N.P.) 613.]

The violation of this section by a county commissioner is not misconduct in office, so as to cause him to be liable to fine and to forfeiture of his office, under G. C. § 12920, in the absence of corrupt motive or wilful misconduct: *State v. Blair*, 71 O. S. 410.

Exceptions thereto.

SEC. 5661. All contracts, agreements or obligations, and orders or resolutions entered into or passed contrary to the provisions of the next preceding section, shall be void, but such section shall not apply to the contracts authorized to be made by other provisions of law for the employment of teachers, officers, and other school employes of boards of education. (R. S. Sec. 2834b.)

Reimbursement under unconstitutional acts.

SEC. 5662. When the commissioners of a county, acting in accordance to law have incurred obligations or issued and sold bonds, and with the proceeds of such obligations or bonds, have acquired land by lease or purchase, and wholly or partially completed a building thereon, and after such proceeds have been so expended and the county thereby placed in the ownership and possession of such improvement or building, the statute under which such bonds were issued or obligations incurred, by final judgment of a court of competent jurisdiction is declared unconstitutional and the county authorities enjoined from levying or collecting taxes to pay the interest and principal of such bonds or obligations, whereby the county, with the proceeds of the bonds which it still retains, has acquired such improvement or building, and by reason of the unconstitutionality of the law under which it has acted, cannot pay its obligations outstanding in the form in which they were issued, such commissioners, if they deem it for the best interest of the county so to do, may fulfill the equitable and moral obligations of the county to reimburse the holders of said bonds or obligations to an amount equal to the principal and interest which has accrued thereon. (R. S. Sec. 2834c.)

This section was held to be constitutional by the United States circuit court of appeals, in *Insurance Co. v. Cuyahoga County*, 106 Fed. 123, 45 C. C. A. 233, 12 O. F. D. 619 [reversing the circuit court in *Insurance Co. v. Commissioners*, 99 Fed. 846, 13 O. F. D. 198].

Bond issue for same.

SEC. 5663. For the purpose provided in the next preceding section, the commissioners may issue and sell bonds of such county or borrow money in such amounts, for such lengths of time and at such rate of interest as they deem proper, not exceeding the rate of four per cent. per annum, payable semi-annually, to be used in the reimbursement and payment of such equitable and moral claims and liabilities against such county. The payment or reimbursement of such moral or equitable claim shall not be made of a claim that has remained due or unpaid, and upon which no payments have been made either upon the principal or interest, for a longer period than ten years. (R. S. Sec. 2834c.)

Claims recoverable by action.

SEC. 5664. If the county commissioners of such county upon the written request of the holder of such equitable claim against the county, provided in section fifty-six hundred and sixty-two, fail within six months after such demand to make provision for it,

the holder thereof shall have a right of action to recover the amount of such claim and interest against such county at any time within ten years from the time the cause of action accrues, or from the date of the last payment of principal and interest. (R. S. Sec. 2834c.)

Use of county buildings.

SEC. 5665. The county commissioners may devote the building or improvement which the county has acquired under the circumstances mentioned in the next three preceding sections to any county purpose. (R. S. Sec. 2834c.)

Payments made under unconstitutional act.

SEC. 5666. When in the circumstances named in the next four preceding sections, the county commissioners have entered into contracts with architects or builders for the supply of labor, materials or supervision for the construction of an improvement or building upon the land purchased by the commissioners, in the circumstances named in said sections, and such labor, materials and supervision have been furnished, in whole or in part and such county has received and retains the benefit thereof, such commissioners shall pay upon such contracts the fair and reasonable value of such labor, materials and supervision. The amount so paid shall not exceed the price named in such contracts less all payments that have been made thereon and all set-offs or counter-claims that exist in favor of the commissioners and against the contracting parties. (R. S. Sec. 2834c-1.)

Title to land and building confirmed in county commissioners.

SEC. 5667. The title to the lands and buildings, as provided in the next five preceding sections, shall be in such county commissioners, and such lands and buildings may be devoted to any county purpose, or if, in the opinion of the commissioners, they are not needed for such purpose, they may be sold by the commissioners and the proceeds applied to any county purpose. (R. S. Sec. 2834c-1.)

Bonds may be issued and tax levied.

SEC. 5668. The county commissioners, if they deem it for the best interests of the county, may borrow the necessary money to pay the amount found to be owing upon the contracts as provided in section fifty-six hundred and sixty-six, and issue their negotiable promissory notes therefor extending over a period of not exceeding ten years, and drawing interest not to exceed five per cent. per annum, payable semi-annually. The commissioners may levy a tax upon all the taxable property in such county to pay such promissory notes and interest as they become due. (R. S. Sec. 2834c-1.)

Disposition of surplus under liquor tax.

SEC. 5669. Any surplus in the treasury of a city, village, county or township, arising from taxation upon the business of trafficking in spirituous, vinous, malt or other intoxicating liquor which is not needed for the purposes named in the statutes providing for the distribution of such taxes, may be transferred to any other fund, including the school fund, by an order of the proper authorities entered upon their minutes. (R. S. Sec. 2834d.)

As to distribution of liquor tax, see G. C. § 6093.

The county commissioners are the "proper authorities" referred to in this section to transfer such surplus: *Infirmity Directors v. Commissioners*, 6 O. N. P. (N.S.) 347, 18 O. D (N. P.) 403.

CHAPTER THIRTY-THREE.

LEVYING TAXES. (Continued.)

LIMITATION OF TAX RATE.

SECTION	SECTION
5649-1. Levy for sinking fund and interest.	5649-3d. Appropriations each fiscal half year.
5649-1a. Former bonds declared valid.	5649-3e. Balances unexpended.
5649-2. Tax levy limitation.	5649-4. Emergencies.
5649-3a. When tax levies to be made; budget; county; municipal corporation; township; school.	5649-5. Proceedings when maximum rate insufficient.
5649-3b. Budget commission; members; powers and duties; expenses.	5649-5a. Vote; notice; ballot.
5649-3c. Examination of budgets; adjustment and certification.	5649-5b. Result; maximum levy fifteen mills.
	5649-6. Consolidated districts.

Levy for sinking fund and interest.

SEC. 5649-1. In any taxing district, the taxing authority shall, within the limitations now prescribed by law, levy a tax sufficient to provide for sinking fund and interest purposes for all bonds issued by any political subdivision, which tax shall be placed before and in preference to all other items, and for the full amount thereof. (104 v. 12.)

The tax limitations do not operate as debt limitations in the manner defined in *Rabe v. Board of Education*, 83 O. S., 403, nor under article XII, section 11, of the constitution, when a board of education, under section 7625, G. C., merely determines to submit the question of the issuance of bonds in a given amount to a vote of the electors. Such limitations apply, however, when after a favorable vote the board proceeds to issue the bonds, and prevent their issuance, unless within the period for which the bonds are to run sufficient interest and sinking fund levies can be made within the tax limitations.

Even in such case the principles referred to have a limited application because of the fact that the bonds are issued by a vote of the people and because of the amendment to section 5649-1, G. C. (104 O. L., 12.) A. G. R. 1915, p. 486.

A county, as a "taxing district," under sections 5649-1 to 5649-5b, G. C., the Smith one per cent. law, is not limited in the amount of its levy by the amount levied in any preceding year. A. G. R. 1915, p. 1311.

Former bonds shall be legal.

SEC. 5649-1a. All bonds heretofore issued by any political subdivision for a lawful purpose which have been sold for not less than par and accrued interest and the proceeds thereof paid into the treasury, shall be held to be legal, valid and binding obligations of the political subdivision issuing the same. (104 v. 12.)

Tax levy limitation.

SEC. 5649-2. Except as otherwise provided in section 5649-4 and section 5649-5 of the General Code, the aggregate amount of taxes that may be levied on the taxable property in any county, township, city, village, school district or other taxing district, shall not in any one year exceed ten mills on each dollar of the tax valuation of the taxable property of such county, township, city, village, school district or other taxing district for that year, and such levies in addition thereto for sinking fund and interest purposes as may be necessary to provide for any indebtedness heretofore incurred or any indebtedness that may hereafter be incurred by a vote of the people. (103 v. 552.)

The taxing authorities of any taxing district may levy taxes not exceeding the aggregate of ten mills on each dollar of the tax valuation of the property of such taxing district for state, county, township, school and municipal purposes, subject to the further limitation of the paragraphs following.

In addition thereto levies may be made for sinking fund and interest purposes necessary to provide for any indebtedness incurred before the passage of said act, and any indebtedness that may be incurred after the passage of said act by a vote of the people.

A municipal corporation may levy for general purposes, as provided in preceding paragraphs 1, 2 and 3, an aggregate of five mills on the taxable property within such corporation only in the event that such levy of five mills, when added to the levy of state, county, township and school purposes, shall not in the aggregate exceed ten mills on the dollar, and whenever such levies exceed ten mills on the dollar, then it is the duty of the budget commission to scale said levies down in proportion to the amount of each until the total levies so made aggregate ten mills or less.

The five mills which, subject to the qualifications hereinbefore defined, may be levied by

a municipal corporation for corporation purposes, are exclusive of such levies for interest and sinking fund purposes as are or may be necessary to provide for any municipal indebtedness incurred prior to the passage of the act of June 2, 1911, and any indebtedness thereafter incurred by a vote of the people.

The supreme court, therefore, found that the relator was entitled to a peremptory writ of mandamus commanding the auditor of Lucas county, defendant therein, to ascertain the rate of taxes necessary to produce the amounts to him certified by the budget commission of Lucas county, provided that the aggregate (exclusive of the levy for the sinking fund and interest purposes, for indebtedness heretofore incurred, and indebtedness that may have been incurred by a vote of the people) shall not exceed the rate of ten mills, * * * then to enter the same upon the tax duplicate of Lucas county. Also, that he ascertain the rate of the levy necessary for sinking fund and interest purposes to provide for indebtedness incurred before the passage of said act and any indebtedness that may have been incurred since the passage of the act by a vote of the people, if any, and add such levy to the tax duplicate in addition to said ten mills: State, ex rel., v. Sanzenbacher, 84 O. S. 504.

The meaning of the words "heretofore" and "hereafter" occurring in section 5649-2, General Code, originally enacted on May 31, 1911, and approved on June 2, 1911, but subsequently amended April 16, 1913, by an act which was approved by the governor, May 6, 1913, filed in the office of the secretary of state on May 9, 1913, is that the original meaning of these words as established at the first enactment of the section was not changed when it was amended, and that the day to which amended section refers is still June 2, 1911. A. G. R. 1914, p. 577.

Under the Smith one per cent. law, interest and sinking fund levies, for the purpose of discharging indebtedness created after June 1, 1911, by vote of the people are not to be included within the taxes which must be limited to ten mills on the duplicate of the taxing district for all purposes as required by sections 5649-2 and 5649-3.

Such levies are not included within the limitations of five, three and two mills respectively, provided for by section 5649-3a.

Section 3295 known as the Longworth act, intends to refer to and adopt as to townships, the same general provisions with reference to issue of bonds as those which apply to municipal corporations in section 3939, General Code. Therefore, where a township is obliged by reason of limits of taxation to issue bonds upon submission to and approval by vote of the people, a levy for the retirement of such bonds, would be a levy for interest and sinking fund purposes, to provide for the extinguishment of a debt created after passage of the Smith one per cent. law by vote of the electors and such levy would be within the fifteen mill limitation and also within that measured by the aggregate amount levied in the district in 1910, but outside all other limitations of the Smith law. A. G. R. 1912, p. 1176.

When tax levies to be made; budget; county; municipal corporation; township; school; blanks.

SEC. 5649-3a. On or before the first Monday in June, each year, the county commissioners of each county, the council of each municipal corporation, the trustees of each township, each board of education and all other boards or officers authorized by law to levy taxes, within the county, except taxes for state purposes, shall submit or cause to be submitted to the county auditor an annual budget, setting forth in itemized form an estimate stating the amount of money needed for their wants for the incoming year, and for each month thereof. Such annual budgets shall specifically set forth:

(1) The amount to be raised for each and every purpose allowed by law for which it is desired to raise money for the incoming year.

(2) The balance standing to the credit or debt of the several funds at the end of the last fiscal year.

(3) The monthly expenditures from each fund in the twelve months and the monthly expenditures from all funds in the twelve months of the last fiscal year.

(4) The annual expenditures from each fund for each year of the last five fiscal years.

(5) The monthly average of such expenditures from each of the several funds for the last fiscal year, and also the total monthly average of all of them for the last five fiscal years.

(6) The amount of money received from any other source and available for any purpose in each of the last five fiscal years, together with an estimate of the probable amount that may be received during the incoming year, from such source or sources.

(7) The amount of the bonded indebtedness setting out each issue and the purpose for which issued, the date of issue and the date of maturity, the original amount issued and the amount outstanding, the rate of interest, the sum necessary for interest and sinking fund purposes, and the amount required for all interest and sinking fund purposes for the incoming year.

(8) The amount of all indebtedness incurred under authority of section 5649-4 and the amount of such additional taxes as may have been authorized as provided in section 5649-5 of the General Code, setting out each issue in detail as provided in the next preceding paragraph.

(9) Such other facts and information as the tax commission of Ohio or the budget commissioners may require.

The aggregate of all taxes that may be levied by a county, for county purposes, on the taxable property in the county on the tax list, shall not exceed in any one year three mills. The aggregate of all taxes that may be levied by a municipal corporation on the taxable property in the corporation, for corporation purposes, on the tax list, shall not

exceed in any one year five mills. The aggregate of all taxes that may be levied by a township, for township purposes, on the taxable property in the township on the tax list, shall not exceed in any one year two mills. The local tax levy for all school purposes shall not exceed in any one year five mills on the dollar of valuation of taxable property in any school district. Such limits for county, township, municipal and school levies shall be exclusive of any special levy, provided for by a vote of the electors, special assessments, levies for road taxes that may be worked out by the taxpayers, and levies and assessments in special districts created for road or ditch improvements, over which the budget commissioners shall have no control.

Such budget shall be made up annually at the time or times now fixed by law when such boards or officers are required to determine the amount in money to be raised or the rate of taxes to be levied in their respective taxing districts.

The county auditor shall provide and furnish such boards and officers blank forms and instructions for making up such budgets. (102 v. 266.)

Inasmuch as the purchase or construction of a tuberculosis hospital is excepted from the provisions requiring a vote of electors, levies made under section 3141, General Code, for the purpose of discharging an indebtedness, created after June 1, 1911, for the purpose of such a hospital, are within the three mill limitation of the Smith law.

The commissioners are limited to such an issue under section 3141, General Code, as may be made in anticipation of a single levy. A. G. R. 1912, p. 1259.

All tax levies, lawfully made by township trustees for township purposes, except those levies which, by express provision of the statute are made to apply only to taxable property in the township outside of the municipality located therein, must be applied to all the taxable property in the township including the taxable property within the municipal corporation located in said township and said levies are in addition to the levies made in said municipality by the taxing authorities thereof for corporation purposes. A. G. R. 1915, p. 1690.

The levy for county purposes must be the same in each taxing district throughout the county. A. G. R. 1915, p. 1364.

The municipal budget must provide for every object for which moneys are to be raised. Sinking fund and interest on all bonds issued subsequent to June 2, 1911, without a vote of the people must be counted within the ten mill limitation of the Smith One Per Cent. Law. A. G. R. 1912, p. 228.

When the council of a municipality submits to the county auditor a budget whose amount exceeds a five mill levy upon the tax valuation of the corporation, the budget should be returned to the city council to be brought within the legal maximum. A. G. R. 1911-1912, p. 1250.

Under the provisions of Section 5649-3a, General Code, the budget commissioners, in the adjustment of the various amounts of taxes to be raised in a taxing district and in reducing the estimates contained in the budgets, are called upon to exercise their official judgment and discretion. In the absence of fraud, bad faith or abuse of discretion it is not within the power of the court to interfere, and an action in mandamus will not lie to control such discretion or correct an error of judgment. State v. Patterson, 93 O. S. 000.

Section 5649-3a of the Smith one per cent. law, excludes from the consideration of the budget commission in ascertaining internal limitations, special levies for road improvements by township trustees upon authorization of electors. In ascertaining the ten mill limitation and all other limitations, however, such levies must be considered.

Where there is no record of an election authorizing such levy, however, the budget commission need not pay any attention to the same. A. G. R. 1911-1912, p. 671.

Levies for sinking fund and indebtedness created prior to June 2, 1911, are not within the interior limitations of the Smith one per cent. law nor are they within the ten mill limitation. They are, however, within the limitation of the aggregate amount raised for all purposes in the year 1910 and also within the fifteen mill limitation.

The budget commission should reduce any and all levies within the limitations of the Smith law, but levies for interest and sinking fund purposes should be preferred over other levies. A. G. R. 1911-1912, p. 671.

A levy of one mill by the board of education imposed annually for the purpose of reimbursing a library association for services to the public in pursuance of a contract between the board and the association, is within the interior limitations of the Smith law and is not a "levy for sinking fund and interest purposes necessary to provide for indebtedness created prior to the passage" of the Smith law.

The obligation which rests upon the board is not an indebtedness within the meaning of the statute nor is there an "impairment of the obligation of contract" in the effect of the Smith law upon such procedures. A. G. R. 1912, p. 1578.

A levy of taxes made by a board of education for the purpose of providing for the payment of bonds issued in anticipation thereof, under authority of section 7629, General Code, must be made within the limitations of the Smith one per cent. law, and also within the five mill limitation, applicable to boards of education as such, and prescribed by section 5649-3a, General Code. A. G. R. 1913, p. 1381.

County budget commission, members of, powers and duties.

SEC. 5649-3b. There is hereby created in each county a board for the annual adjustment of the rates of taxation and fixing the amount of taxes to be levied therein, to be known as the budget commissioners. The county auditor, the county treasurer and the prosecuting attorney shall constitute such board. The budget commissioners shall meet at the auditor's office in each county on the first Monday in August annually, and shall complete their work on or before the third Monday in that month, unless for good cause the tax commission of Ohio shall extend the time for completing the work. Each member shall be sworn faithfully and impartially to perform the duties imposed upon

him by law. Two members shall constitute a quorum. The auditor shall be the secretary of the board and shall keep a full and accurate record of all proceedings. The auditor shall appoint such messengers and clerks as the board deems necessary, who shall receive not to exceed three dollars per day for their services for the time actually employed, which shall be paid out of the county treasury. The budget commissioners shall be allowed their actual and necessary expenses. Such expenses shall be itemized and sworn to by the person who incurred them and paid out of the county treasury when approved by the board. For the purpose of adjusting the rates of taxation and fixing the amount of taxes to be levied each year the county auditor and the budget commissioners shall be governed by the amount of the taxable property as shown on the auditor's tax list for the current year; provided, that if the auditor's tax list has not been completed, the county auditor shall estimate as nearly as practicable the amount of the taxable property for such year and such officers shall be governed by such estimate. (106 v. 180.)

Examination of budgets, adjustments and certificates.

Sec 5649-3c. The auditor shall lay before the budget commissioners the annual budgets submitted to him by the boards and officers named in section 5649-3a of this act, together with an estimate to be prepared by the auditor of the amount of money to be raised for state purposes in each taxing district in the county, and such other information as the budget commissioners may request, or the tax commission of Ohio may prescribe. The budget commissioners shall examine such budgets and estimates prepared by the county auditor, and ascertain the total amount proposed to be raised in each taxing district for state, county, township, city, village, school district, or other taxing district purposes. If the budget commissioners find that the total amount of taxes to be raised therein does not exceed the amount authorized to be raised in any township, city, village, school district, or other taxing district in the county, the fact shall be certified to the county auditor. If such total is found to exceed such authorized amount in any township, city, village, school district, or other taxing district in the county, the budget commissioners shall adjust the various amounts to be raised so that the total amount thereof shall not exceed in any taxing district the sum authorized to be levied therein. In making such adjustment the budget commissioners may revise and change the annual estimates contained in such budgets, and may reduce any or all the items in any such budget, but shall not increase the total of any such budget, or any item therein. The budget commissioners shall reduce the estimates contained in any or all such budgets by such amount or amounts as will bring the total for each township, city, village, school district, or other taxing district, within the limits provided by law.

When the budget commissioners have completed their work they shall certify their action to the county auditor, who shall ascertain the rate of taxes necessary to be levied upon the taxable property therein of such county, and of each township, city, village, school district, or other taxing district, returned on the grand duplicate, and place it on the tax list of the county. (102 v. 266.)

The budget commission is not an independent levying authority. Its discretion must not be exercised beyond the province of preventing levies in excess of legal limitations, and when the amounts certified to it are within such limitations it is not empowered to make reductions therein.

The budget commission must be allowed a reasonable discretion, however, in making allowances for estimated increases in the duplicate between the time of making up the annual budget and the time when the duplicate is transmitted to the county treasurer by the county auditor through the agency of the county auditor and board of review. A. G. R. 1912, p. 1795.

Though the General Code provides that the auditor may limit excesses against any individual where the tax payer has not paid taxes, and that the county commissioners may allow a refund to a tax payer who has paid under an erroneous levy, these provisions do not apply to the machinery of the Smith one per cent. tax law, when the error is attributable to the budget commission itself in its general certification of the levy to the auditor.

Any remedy in the way of re-adjustment must be procured through the budget commission itself. A. G. R. 1912, p. 1086.

Appropriations each fiscal half year.

Sec. 5649-3d. At the beginning of each fiscal half year the various boards mentioned in section 5649-3a of this act shall make appropriations for each of the several objects for which money has to be provided, from the moneys known to be in the treasury from the collection of taxes and all other sources of revenue, and all expenditures within the following six months shall be made from and within such appropriations and balances thereof, but no appropriation shall be made for any purpose not set forth in the annual budget nor for a greater amount for such purpose than the total amount fixed by the budget commissioners, exclusive of receipts and balances. (102 v. 266.)

The Smith law deals primarily with county needs and their relation to taxation revenues and their expenditures, and in this connection the "fiscal year" is established by the provision for the semi-annual settlements between the county auditor and county treasurer, for the reason that by these arrangements, the revenues collected for county purposes first become available. Therefore, March 1st, being a date when these sums first become available, such date must be considered the beginning of the "fiscal year" and appropriations provided for under section 5649-3d must be made for that year. A. G. R. 1912, p. 1127.

Section 5649-3d limiting appropriations to the purpose set forth in the annual budget and to the amounts fixed by the budget commission relates to moneys raised by taxation only, and expressly excludes moneys designated as "receipts and balances" such as those of the general fund derived for the transfer of balances left in other funds at the close of the preceding fiscal years. A. G. R. 1912, p. 1633.

Section 5649-3d provides that appropriations shall be made "from the moneys known to be in the treasury" and omits the former language of the code "or estimated to come into it during the six months next ensuing." The latter verbiage may not be reread into the statutes and the board of education must be governed accordingly. A. G. R. 1912, p. 1628.

Prior to the enactment of the Smith one per cent. law, 102 O. L. 272, council could anticipate revenues expected to come into the treasury during the succeeding half year. By that act, however, council is limited in its appropriations to the money known to be in the treasury. A. G. R. 1912, p. 1576.

Balances unexpended.

SEC. 5649-3c. Unexpended appropriations or balances of appropriations remaining over at the end of the year, and the balances remaining over at any time after a fixed charge shall have been terminated by reason of the object of the appropriation having been satisfied or abandoned, shall revert to the general fund, and shall then be subject to other authorized uses, as such board or officers may determine. (102 v. 266.)

Under the Smith one per cent. law, in spite of the language of 5649-3e, G. C., providing that unexpended balances shall revert to the "general fund," it must be concluded in view of Section 5649-3a, G. C., that the existence of so-called "ledger funds" constituting appropriations for specific purposes for which levies have been definitely made, have not been supplanted by single "general" or "undivided tax fund."

The power of the county commissioners in making appropriations is therefore limited not only by the requirement that appropriations shall not exceed the total amount fixed by the budget commission, but also by the requirement that all appropriations must be made from funds in the treasury, and not for a greater amount for any purpose than that which stands to the credit of the particular fund on the ledger of the county.

Section 5649-3e of the General Code provides "that balances remaining over shall revert to the general fund." From the primary meaning of the word "revert" and also from the fact that the general fund is treated as a thing already existing and is not defined as new creation, such language should be construed to require such balances to revert to the funds from which they were taken. A. G. R. 1912, p. 285.

Emergencies.

SEC. 5649-4. For the emergencies mentioned in sections forty-four hundred and fifty, forty-four hundred and fifty-one, fifty-six hundred and twenty-nine, seventy-four hundred and nineteen and 7630-1 of the General Code, the taxing authorities of any district may levy a tax sufficient to provide therefor irrespective of any of the limitations of this act. (103 v. 527.)

Where the inspector of workshops and factories prohibits the use of a schoolhouse until certain repairs are made, but the board of education decides to erect a new school building instead, and the electors vote for a \$25,000 bond issue for the construction thereof, but cannot levy sufficient taxes to pay bonds and maintain school, there would be an emergency within the meaning of section 5649-4, General Code, and the necessary taxes for the retirement of bonds required for the purpose might be levied outside of all limitations of law. A. G. R. 1914, p. 548.

A resolution of a board of county commissioners finding that certain principal highways of the county are "unfit for travel or cause difficulty, danger or delay to teams passing thereon," "by reason of the large amount of traffic thereon or from neglect or inattention to the repair thereof" does not sufficiently state an emergency within the meaning of section 5649-4 G. C., and such resolution, though adopted under section 7419, G. C., is not sufficient to authorize the making of a levy outside of the Smith law limitations.

Section 5649-4 of the Smith law provides that levies by municipal corporations and township trustees under sections 4450 and 4451, General Code, for meeting the expenses of epidemics of dangerous diseases, may be made without regard to the limitations of the Smith law. A. G. R. 1911-1912, p. 671.

Proceedings when maximum rate insufficient.

SEC. 5649-5. The county commissioners of any county, the council of any municipal corporation, the trustee of any township, or any board of education may, at any time, by a majority vote of all the members elected or appointed thereto, declare by resolution that the amount of taxes that may be raised by the levy of taxes at the maximum rate authorized by sections 5649-2 and 5649-3 of the General Code as herein enacted within its taxing district, will be insufficient and that it is expedient to levy taxes at a rate, in excess of such rate and cause a copy of such resolution to be certified to the deputy state supervisors of the proper county. Such resolution shall specify the amount of the proposed increase of rate above the maximum rate of taxation and the number of years not exceeding five during which such increased rate may be continued to be levied. (102 v. 266.)

Where, under sections 5649-5 and 5649-5a of the Smith one per cent. tax law, the electors of several respective taxing districts in November vote in favor of a specified additional levy after the tax list and duplicate have been made up in October by the county auditor in accordance with the allowance of the budget commission and delivered to the treasurer, by the auditor, and any taxpayers have already paid up in accordance with the duplicate; Held, "That the additional levies cannot be placed upon the 1911 duplicate but may be placed upon that of the year 1912 if the taxing authorities of such districts wish, at the time of making up the budgets for 1912, to avail themselves of the authority thus acquired by them." A. G. R. 1911-1912, p. 1466.

Vote; notice; ballot.

SEC. 5649-5a. Such proposition shall be submitted to the electors of such taxing district at the November election that occurs more than twenty days after the adoption of such resolution. The deputy state supervisors shall prepare the ballots and make the necessary arrangements for the submission of such question to the electors of such taxing district, and the election shall be conducted, canvassed and certified in like manner, except as otherwise provided by law, as regular elections in such taxing district for the election of officers thereof. Twenty days' notice of the election shall be given in one or more newspapers printed in the taxing district once a week for four consecutive weeks prior thereto, stating the amount of the additional rate to be levied, the purpose for which it is to be levied, and the number of years during which such increased rate may be continued to be levied, and the time and place of holding the election. If no newspaper is printed therein, the notice shall be posted in a conspicuous place and published once a week for four consecutive weeks in a newspaper of general circulation in such taxing district.

The form of the ballots cast at such election shall be:

"For an additional levy of taxes for the purpose of..... not exceeding..... mills, for not to exceed..... years, Yes."

"For an additional levy of taxes for the purpose of..... not exceeding..... mills, for not to exceed..... years, No." (102 v. 266.)

Result; maximum levy fifteen mills.

SEC. 5649-5b. If a majority of the electors voting thereon at such election vote in favor thereof, it shall be lawful to levy taxes within such taxing district at a rate not to exceed such increased rate for and during the period provided for in such resolution, but in no case shall the combined maximum rate for all taxes levied in any year in any county, city, village, school district, or other taxing district, under the provisions of this and the two preceding sections and sections 5649-1, 5649-2 and 5649-3 of the General Code as herein enacted, exceed fifteen mills. (103 v. 571.)

The amendment to section 5649-2, a part of the so-called Smith law and affecting the 10 mill limitation, though subsequent to amendment to section 5649-5b imposing the 15 mill limitation, is to be read together with the latter so that sinking fund and interest levies necessary to provide for previously incurred bonded indebtedness, and such indebtedness authorized by vote of the people is still subject to the 15 mill limitation. A. G. R. 1914, p. 708.

Emergency levies made under authority of section 5649-4, G. C., are not to be counted in ascertaining the limitation of fifteen mills imposed by section 5649-5b, G. C. A. G. R. 1915, p. 1693.

As between the ten mill and the fifteen mill limitation, the levies provided for by Sections 60, 72, 105, 238, 239, and the second paragraph of Section 215 of the Cass Highway Law, to-wit, Sections 3298-1, 3298-13, 6926, 6956-1, 3298-18 and 1222 G. C., such levies are above the ten mills but within the fifteen mills. A. G. R. 1916.

Interest and sinking fund levies, whether for the retirement of bonds issued or for indebtedness incurred prior to the passage of the Smith law by the vote of the people or otherwise, are within the fifteen mill limitation of said law. A. G. R. 1911-1912, p. 1377.

If a board of township trustees has made the levy provided by section 3298-1, G. C., and has under section 3298-3, G. C., designated a certain road or roads or parts thereof to be improved, and if the money raised by said levy does not furnish sufficient funds for the construction and repair of the designated roads in such township, then the trustees may issue and sell bonds of such township to provide funds for the construction or reconstruction of such roads, provided the question of issuing said bonds shall be first submitted to the qualified electors of the township at a general or special election therefor, and approved by a majority of the electors who participated in the last election for governor in the township, as provided in section 3298-11, G. C. If such bonds are issued, levies for the payment of principal and interest will be outside the two mill limitation upon taxes authorized to be levied for general township purposes, and will be subject only to the limitation on the combined maximum rate for all taxes now in force, to-wit, the fifteen mill limitation, and such levies will be made upon all the taxable property of the township, including the taxable property of any municipal corporation situated within the township. The sections of the General Code herein discussed did not go into effect until September 6, 1915, and therefore no election on the question of issuing bonds may be held until after the levies to be made under section 3298-1, G. C., in 1916, have been found insufficient. A. G. R. 1915, p. 1811.

Inasmuch as bonds issued under the Bense Act, sections 1249 and 1261, G. C., providing for the installation of sewer works upon the order of the state board of health, are not expressly exempted from the fifteen mill limit of the Smith one per cent. law, such limitations may not be exceeded in making levies for the purpose of paying the interest or principal of such bonds. A. G. R. 1913, p. 1644.

Consolidated districts.

SEC. 5649-6. Whenever two or more taxing districts are consolidated by annexation or otherwise, the aggregate amount of taxes authorized under section two of this act, for such consolidated district shall not exceed the sum of the aggregate amounts which would have been authorized for all of said taxing districts separately. (101 v. 430, § 6.)

CHAPTER THIRTY-FOUR.

COLLECTION OF TAXES.

DUTIES OF COUNTY AUDITOR.

SECTION

2568. Account current with county treasurer.
2573. Transfer of property.
2574. Fraudulent transfers.
2583. Tax list and duplicate.
2585. Tax to be levied on each tract.
2586. Fractional part of one cent disposed of, how.
2587. Auditor shall dispose of fractional mills.
2594. How taxes placed on tax list and duplicate.
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SECTION

2596. Settlement by auditor with treasurer.
2597. Proceedings as to delinquent list.
2598. Certificate to treasurer as to moneys collected.
2599. Certificate to treasurer as to taxes charged.
2601. List and record of delinquent lands and lots.
2602. Accounts with townships, cities, villages, and special school districts.
2608. Delinquent and forfeited land to be taxed.

Account current with county treasurer.

SEC. 2568. The county auditor shall keep an accurate account with the treasurer of the county, showing all moneys paid into the treasury, the amount thereof, the time when, by whom, from what source and to what fund paid, and of all moneys paid out, showing the amount thereof, the time when, to whom, for what purpose and from what fund paid. Upon the receipt of the daily statement of the county treasury required by law, the auditor shall enter on his account current as a charge to the treasurer the amount of tax collected as shown by such statement, in the following manner: Collections of liquor taxes, to be credited to the "undivided liquor tax fund," collections of cigarette tax, to be credited to the "undivided cigarette tax fund," collections of inheritance tax to be credited to the "undivided inheritance tax fund," and collections of other taxes and assessments of whatever kind to be credited to the "undivided general tax fund." (R. S. Sec. 1023.)

Transfer of property to name of purchaser.

SEC. 2573. On application and presentation of title, with the affidavits required by law, or the proper order of a court, the county auditor shall transfer any land or town lot or part thereof charged with taxes on the tax list from the name in which it stands into the name of the owner, when rendered necessary by a conveyance, partition, devise, descent or otherwise. If by reason of the conveyance or otherwise, a part only of a tract or lot, as charged on the tax list, is to be transferred, the person desiring the transfer shall make satisfactory proof of the value of such part compared with the value of the whole, as charged on the tax list, before the transfer is made. The auditor shall indorse on the deed or other evidences of title presented to him that the proper transfer of the real estate therein described has been made in his office or that it is not entered for taxation, and sign his name thereto. (R. S. Sec. 1025.)

In a proceeding by mandamus against a county auditor to compel him to perform the duties enjoined by this section, the existence of all the material facts necessary to put him in default must be pleaded and proven: *Dye v. State*, ex rel., 73 O. S. 231.

Where the vendee of the coal underlying lands, desires to have that part of the premises transferred into his name on the tax list of the county, it is incumbent upon him, under the provisions of this section, to present to the county auditor, proper evidence of his title and make satisfactory proof to him of the value of such coal as compared with the valuation of the whole lands as charged on the tax list; and a written agreement between the vendor and vendee of the coal as to a division of the valuation on the tax list between them, is not binding upon the auditor. The evidence on which he is to act is prescribed by the statute, and he can be compelled to act on no other: *Dye v. State*, ex rel., 73 O. S. 231.

A petition for mandamus to compel the auditor to transfer a part of lands or town lots, under the provisions of this section, which fails to allege that competent evidence was offered to the auditor of the value of such part as compared with the value of the whole as charged on the tax list of the county is fatally defective and states no ground for the writ of mandamus: *Dye v. State*, ex rel., 73 O. S. 231.

It is the duty of the auditor, after delivering a certificate of purchase of delinquent land sold for taxes, to transfer the same into the name of the purchaser; and it is also his duty, when the same lands have been sold and conveyed to the owner, or conveyed under a judicial sale of the owner's interest, within two years from the delinquent tax sale, to transfer the same to the grantee under the deed; but if such lands should not be redeemed within two years from the time of the delinquent tax sale, and the auditor has executed and delivered a

deed therefor to the purchaser, it will then be the duty of the auditor to transfer the land to the name of the holder of the tax deed: *State, ex rel., v. Godfrey*, 62 O. S. 18 [reversing *State, ex rel., v. Godfrey*, 20 O. C. C. 649, 10 O. C. D. 316].

If one person owns an estate in specified apartments of a building, which estate amounts to an interest in such realty, it is the duty of the auditor, upon proper application therefor, to ascertain the comparative value of such part and to transfer the same into the name of the owner upon the tax duplicate: *Cincinnati College v. Yeatman*, 30 O. S. 276.

The county auditor is bound to restore to the tax duplicate unauthorized deductions made therefrom, and a lease for ten years does not interfere with such right: *Scott v. Raine*, 11 Dec. Rep. 171, 25 Bull. 154.

The presentation by the party seeking the transfer, of a statement of the facts concerning the title, with the request to the auditor to have the property valued and transferred, is not a compliance with the statute. The evidence on which the auditor is to act is prescribed by the statute, and he can be required to act on no other: *Cincinnati College v. LaRue*, 22 O. S. 469.

Before the auditor of a county can be required to transfer real property from the name in which it stands charged on the duplicate, to the name of the party to whom it has been assigned or conveyed, evidence of the title of the party to whom the transfer is to be made must be presented to the auditor; and where the transfer is to be of only a part of such property, satisfactory proof must also be made to the auditor of the value of such part as compared with the valuation of the whole as charged on the duplicate: *Cincinnati College v. LaRue*, 22 O. S. 469.

This section applies to taxes charged against the property at the time of the transfer as well as to future taxes. The purpose of the state in providing that the valuation of the part so transferred, and of the part which is not transferred, shall be determined, is to fix the proportion of the taxes so charged which each part of said tract is to bear: *Williamson v. Lewis*, 2 O. N. P. (N. S.) 1, 13 O. D. (N. P.) 369.

Fraudulent transfers.

SEC. 2574. If a transfer of real estate is fraudulently or improperly obtained or the just proportion of valuation is not transferred with the part of a lot or tract transferred, the auditor may cancel such transfer and, if necessary, require the assessor of the proper township, ward or city, to return the proper valuation. (R. S. Sec. 1026.)

See **SEC. 2583** (106 v. 261, § 56) for provisions as to the compiling and making up of the auditor's tax list and treasurer's duplicate of real and personal property.

Tax to be levied on each tract.

SEC. 2585. After receiving from the auditor of state and from other officers and authorities legally empowered to determine the rates or amounts of taxes to be levied for the various purposes authorized by law, statements of the rates and sums to be levied for the current year, the county auditor shall forthwith proceed to determine the sums to be levied upon each tract and lot of real property, adding the taxes of any previous year that have been omitted, and upon the amount of personal property, moneys and credits listed in the county, in the name of each person, company, or corporation which shall be assessed equally on all real or personal property subject to such taxes, and entered in one or more columns, in such manner and form as the auditor of state prescribes. (R. S. Sec. 1036.)

Additions to the duplicate of the current year and the charge of the omitted taxes thereon, can be made as far back only as the last decennial appraisal of real estate; and if in the meantime, such lands have changed hands, only the taxes chargeable since the last change of ownership can be so charged: *Building Co. v. Brooks*, 9 O. C. C. 151, 6 O. C. D. 280.

How fractional part of one cent disposed of.

SEC. 2586. In determining the amount of taxes to be levied upon the real and personal property subject thereto, if the amount chargeable against a piece of real property or upon the personal property of any person, company or corporation, contains a fractional part of a cent, and such fraction exceeds five mills, it shall be entered as a whole cent, but if such fraction is five mills or less it shall be dropped. In all cases where the whole amount of taxes upon the personal property, moneys and credits of a person does not amount to ten cents, the auditor shall not enter it upon the tax list if such person has no other taxable property. (R. S. Sec. 1036.)

Auditor shall dispose of fractional mills.

SEC. 2587. The county auditor shall not be required to assess on the taxable property of the county or of any township, city, village or school district therein for any purpose, nor for all purposes, any rate of taxation containing or resulting in any fraction other than a decimal fraction nor in any decimal fraction less than one-tenth of a mill. but if the sum required to be raised for any purpose, or for all purposes, results in a fraction less than one-twentieth of a mill, such fraction shall be dropped, and if more than one-

twentieth and less than one-tenth, the difference between such fractions and one-tenth of a mill shall be added to such fraction. (R. S. 1037.)

How taxes placed on tax list and duplicate.

SEC. 2594. The auditor shall set down the amount of taxes charged against each entry in two separate columns, one-half thereof, exclusive of road taxes, in each column, and add all road taxes to the first half with a sufficient blank space at the right of each column to write the word "paid," and when payment of either half of such taxes is made, the treasurer shall write in the blank space opposite such tax, the word "paid." The auditor of state may prescribe such other forms for tax lists and duplicates as seem proper to him in order to produce uniformity throughout the state, and county auditors shall conform thereto. (R. S. Sec. 1041.)

Installments of assessments for municipal improvements which are certified to the county auditor and are due and payable within the year next after the last day of September, in any year, should be placed upon the duplicate of the county for such year and collected as other taxes; the installments not so due and payable should not be placed upon the annual duplicate until they become so due and payable: *Makley v. Whitmore*, 61 O. S. 587.

Installments of assessments which are properly entered upon the annual county duplicate should be collected the same as other taxes, and in case a judicial sale of real estate, or a sale by administrators, executors, guardians or trustees, made after the last day of September, in any year, such installments as stand unsatisfied upon such duplicate should be paid out of the proceeds of such sale, as provided as to other taxes in G. C. §§ 5690 to 5693: *Makley v. Whitmore*, 61 O. S. 587.

Installments of assessments not due and payable within the year next after the last day of September, remain a lien upon the real estate in the hands of the purchaser at such judicial sale, or sales by administrators, executors, guardians or trustees, and such purchaser takes such real estate burdened with the lien of such unmatured assessments, and he has no right to have the same paid out of the proceeds of such sale. Neither has such municipality such right: *Makley v. Whitmore*, 61 O. S. 587.

Delivery of duplicate to treasurer.

SEC. 2595. On or before the first day of October of each year, the county auditor shall deliver to the county treasurer a true copy or duplicate of the books containing the tax list required to be made by him for the year. (R. S. Sec. 1042.)

The delivery of the duplicate to the treasurer corresponds to issuing an execution upon a judgment to the sheriff: *Thompson v. Kelly*, 2 O. S. 647.

The dates fixed in this section are fixed because of the time when the lien attaches and the time when the duplicate is to be delivered to the treasurer: *State, ex rel., v. Wright*, 8 O. C. C. (N. S.) 366, 18 O. C. D. 697.

Under this section, the county auditor is bound to deliver to the county treasurer the tax duplicate for the year's levy on or before October 1st of such year: *Anonymous* 7 O. N. P. 554; *Scheid v. Scheid*, 7 O. N. P. 554, 5 O. D. (N. P.) 559.

Settlement by auditor with treasurer.

SEC. 2596. On or before the fifteenth day of February and on or before the tenth day of August of each year, the county auditor shall attend at his office to make settlement with the treasurer of the county and ascertain the amount of taxes with which such treasurer is to stand charged. At each August settlement, the auditor shall take from the duplicate previously put into the hands of the treasurer for collection a list of all such taxes as the treasurer has been unable to collect, therein describing the property on which such delinquent taxes are charged as described on such duplicate and note thereon in a marginal column the several reasons assigned by the treasurer why such taxes could not be collected. Such last mentioned list shall be signed by the treasurer, who shall testify to the correctness thereof, under oath, to be administered by the auditor. (R. S. Sec. 1043.)

Proceedings by mandamus, on the relation of the treasurer of state, will lie to compel the treasurer of a county to transfer to the state treasury the state's proportion of taxes collected by such county treasurer: *State v. Staley*, 38 O. S. 259.

The treasurer is to be charged with the taxes levied on the duplicate, less the amount returned delinquent and the collection fees allowed the treasurer: *State v. Staley*, 38 O. S. 259; *Neil v. Barron*, 7 O. N. P. 84, 8 O. D. (N. P.) 424.

The statement under oath by the treasurer that "the foregoing is a correct list of lands and town lots returned delinquent for the non-payment of taxes charged thereon," is not a compliance with this section of the statute, and a sale of lands made pursuant to such list is void: *Stambaugh v. Carlin*, 35 O. S. 209.

A list of delinquent lands, whereon are not noted the reasons assigned by the treasurer why such taxes could not be collected, does not comply with this section and a sale thereunder is void: *Stambaugh v. Carlin*, 35 O. S. 209.

A treasurer is not liable personally for collecting taxes which appear upon the duplicate delivered to him, even if such taxes are not valid: *Thompson v. Kelly*, 2 O. S. 647.

By this section annual settlements are required to be made each August: *Schott v. Burckhardt*, 2 O. N. P. 90, 3 O. D. (N. P.) 279.

Taxes are delinquent only when the treasurer has attempted to collect them, and has reported under oath, his failure so to collect them, together with his reason for not collecting them: *Ratterman v. Ingalls*, 10 Dec. Rep. 748, 23 Bull. 260.

Proceedings as to delinquent list.

SEC. 2597. In making such list, the delinquencies of each township shall be kept separate and distinct. After deducting the amount of taxes as returned delinquent and the collection fees allowed the treasurer from the several taxes charged on the duplicate in a just and ratable proportion, the treasurer shall be held liable for the balance of such taxes. After first correcting any error which may have occurred in the apportionment of taxes at any previous settlement, the auditor shall certify the balance due the state, the balance due the county, the balance due for road purposes and the balance due the township, and forthwith shall record such list of delinquencies in his office. (R. S. Sec. 1043.)

Certificate to treasurer as to moneys collected.

SEC. 2598. In making the settlement required by the preceding two sections, the auditor shall carefully examine the tax duplicate and ascertain, from the entries of taxes and penalty paid, in whole or in part, and from such other sources of information as are within his reach, the true amount collected by the treasurer or account of each of the several taxes charged on such duplicate, the amount remaining in the hands of the treasurer belonging to each fund, and shall give to the treasurer separate certificates in duplicate of the separate sums found to have been collected by him. (R. S. Sec. 1044.)

Certificate to treasurer as to taxes charged.

SEC. 2599. The county auditor shall also make and deliver to the treasurer a certificate specifying the amount charged on the tax duplicate of the county for each of the several purposes for which taxes have been levied, and also a certificate or an abstract of the taxes which have become due and payable and which remain unpaid. Provided that in making the settlement in February of each year, the auditor may ascertain the amount of taxes collected from the statements required by law to be made to him by the treasurer. (R. S. Sec. 1044.)

List and record of delinquent lands and lots.

SEC. 2601. During the month of August of each year, the auditor shall make and record, in a book provided for that purpose, a list of all lands and town lots returned by the treasurer delinquent at the preceding settlement, describing them as described on the tax duplicate, charging thereon the unpaid taxes for the year next preceding, together with the penalty thereon, and also the taxes of the current year. He shall certify the correctness of such list and the date at which it was recorded, and sign it officially. (R. S. Sec. 1046.)

Referred to as showing that unpaid taxes on realty are to be preserved in one list: *Ratterman v. Ingalls*, 10 Dec. Rep. 748, 23 Bull. 260 [affirmed at general term, *Ingalls v. Ratterman*, 24 Bull. 433, which was affirmed in *Ratterman v. Ingalls*, 48 O. S. 468].

Accounts with townships, cities, villages, and special school districts.

SEC. 2602. The auditor shall open an account with each township, city, village, and special school district in the county, in which, immediately after his semi-annual settlement with the treasurer in February and August of each year, he shall credit each with the net amount so collected for its use.

On application of the township, city, village, or school treasurer the auditor shall give him a warrant on the county treasurer, for the amount then due to such treasurer, and charge him with the amount of the warrant, but the person so applying for such warrant shall deposit with the auditor a certificate from the clerk of the township, city, village, or district, stating that he is treasurer thereof, was duly elected or appointed, and that he has given bond according to law. (R. S. Sec. 1047.)

The trustees of a township are entitled in their official capacity to money collected by taxation, and if the treasurer refuses to pay over the money upon presentation of a proper order, he may be compelled by mandamus to make such payment: *Trustees v. Dillon*, 16 O. S. 38.

The county auditor is to credit each village with the total amount due it for all purposes, and not the amount due to each village fund: *Brown v. Van Wert*, 4 O. C. C. 407, 2 O. C. D. 622 [reversed on another ground, *Van Wert v. Brown*, (State v. Rouch), 47 O. S. 477.]

Abstract of delinquent list to auditor of state; delinquent and forfeited land to be taxed.

SEC. 2608. The delinquent list shall not be returned to the office of the auditor of state but shall be recorded by the county auditor immediately after his semi-annual settlement with the county treasurer, an abstract of which, in such forms as the auditor of state prescribes, shall be sent to his office in August, with the settlement sheet of the

county treasurer. No taxes returned delinquent shall be paid into the state treasury, except by the county treasurers, and in making out the duplicate of each year, all tracts of land and lots returned delinquent or forfeited to the state, shall be again entered on the duplicate, and the taxes on such tract or lot, including the taxes of the current year, shall be charged thereon, with fifteen per cent. penalty on the amount charged on the duplicate of the preceding year. (R. S. Sec. 1053.)

This section, together with G. C. § § 5678 and 5679, when construed together, authorize the imposition of a penalty of 15 per cent for the nonpayment of taxes assessed and levied on a tract or lot of land for the first default in payment thereof. These sections do not permit the assessments of a penalty on the same taxes, or the penalty thereon, in any succeeding year or years, by reason of the continued nonpayment of such taxes and penalty: *White v. Woodward*, 44 O. S. 347.

There is no statutory provision for imposing a penalty upon unpaid assessments against real property for public improvements; and mandamus will lie to compel a county treasurer to accept such assessments without the penalty: *State, ex rel., v. Sanzenbacher*, 13 O. C. C. (N. S.) 356, 22 O. C. D. 16.

CHAPTER THIRTY-FIVE.

COLLECTION OF TAXES. (Continued.)

DUTIES OF COUNTY TREASURER.

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Daily statement to county auditor.

SEC. 2642. Each business day, the county treasurer shall make a statement to the county auditor for the preceding day, showing the amount of taxes received and credited to the various undivided tax funds, the amount received on auditor's draft, the amount received from all other sources, the total amount deposited in the depository, the total amount paid by check on the depository, the total amount paid out in cash, the balance in the depository and the balance in the treasury. (R. S. Sec. 1084.)

Semi-annual statement to county auditor.

SEC. 2643. At the time of closing the books at the end of each semi-annual collection of taxes, the county treasurer shall make to the county auditor a statement showing the amount of taxes received in each taxing district in the county since the last semi-annual settlement under the following heads: Liquor tax, cigarette tax, inheritance tax, special assessment tax, delinquent personal tax, road tax, dog tax and general tax. The treasurer shall keep such accounts in books provided for that purpose as will enable him to make the statements required in this and the preceding sections. (R. S. Sec. 1084.)

How money paid into county treasury; from state to county treasury.

SEC. 2645. Except payments of taxes charged on the duplicate and made before the return by the treasurer of the delinquent list for unpaid taxes, all payments of money into the county treasury shall be on the draft of the county auditor in favor of the county treasurer. The auditor shall preserve a duplicate copy of each such draft and the auditor and treasurer shall each keep an accurate record of the number, date and amount thereof and of the fund in favor of which it is drawn, but a payment or transfer of money from the state treasury to the county treasury shall be made on the warrant of the auditor of state, who shall transmit a triplicate copy thereof to the county auditor, to be by him preserved and a record by him kept of the number, date, fund and amount of such warrant. (R. S. Sec. 1085.)

What bills or notes state and county treasurers shall receive and disburse.

SEC. 2646. Notes of the United States, notes of solvent national banks organized under act of congress, and notes of solvent banks of this state shall be received by county treasurers and the treasurer of state, and by them disbursed in payment of legal demands on state and county treasuries. (61 v. 38, § 1.)

Duplicate receipts shall be given.

SEC. 2647. When money is paid to the county treasurer except on account of taxes charged on the duplicate, he shall give to the person paying duplicate receipts therefor,

one of which such person shall forthwith deposit with the county auditor, who shall charge the treasurer with the amount thereof. (R. S. Sec. 1086.)

Treasurer shall give notices of rates.

SEC. 2648. Upon receiving from the county auditor a duplicate of taxes assessed upon the property of the county, the county treasurer shall immediately cause notice thereof to be posted in three places in each township of the county, one of which shall be at the place of holding elections in such township, and also be inserted for six successive weeks in a newspaper having a general circulation in the county. Such notice shall specify particularly the amount of taxes levied on the duplicate for the support of the state government, the payment of interest and principal of the public debt, the support of state common schools, defraying county expenses, repairing of roads, keeping the poor, building of bridges, township expenses and for each other object for which taxes may be levied on each dollar valuation. (R. S. Sec. 1087.)

This section is in pari materia with G. C. § 6252; and the two sections are to be construed together: *State v. Commissioners*, 7 O. N. P. 239, 1 O. D. (N. P.) 584.

The county treasurer is the person who is authorized to cause notices of the rates of taxation to be published; and under the limitations of the statute, he is empowered to select the newspapers in which such notices shall be published. This section is in pari materia with G. C. § 4827, 6252, and 6253, and such sections are to be construed together: *Elliott v. Commissioners*, 9 Dec. Rep. 644, 16 Bull. 69.

When office must be open to receive taxes.

SEC. 2649. The office of the county treasurer shall be kept open for the collection of taxes from the time of delivery of the duplicate to the treasurer until the twenty-fifth day of January and from the first day of April until the twentieth day of July. (R. S. Sec. 1088.)

Under this section the treasurer and the auditor can not have a valid annual settlement prior to the 20th day of July: *French v. Insurance Co.*, 12 O. D. (N. P.) 183.

What receipt for taxes shall contain.

SEC. 2650. When any tax is paid, the county treasurer shall give to the person paying it a receipt therefor, specifying therein the land, lot or property on which the tax was assessed, as described on the duplicate or in other sufficient manner, which receipt shall be ruled in columns setting forth in the first a description of each item of property, in the second, the value thereof, in the third, the rate of the tax upon each item expressed in mills and fractions, if any, and in the fourth, amount of taxes on each such item. (R. S. Sec. 1090.)

Form of receipt for special taxes.

SEC. 2651. Such form of receipt may be departed from when necessary as to assessments and special taxes and where the tax due on any item embraces a penalty or delinquency. As to personal property, the receipt shall be of like form, omitting the description of the property. If a penalty is added, and charged by the treasurer, it shall be included in the receipt, and the amount thereof and the fact that it is a penalty shall be fully, plainly and separately stated in writing upon the face of the receipt. (R. S. Sec. 1090.)

Penalty for issue of unlawful receipt.

SEC. 2652. A county treasurer who knowingly issues or permits to be issued a receipt for taxes in violation of the requirements of the preceding two sections shall forfeit and pay twenty-five dollars, to be recovered in the name and for the benefit of the person to whom such unlawful receipt is issued. (R. S. Sec. 1090.)

When taxes to be paid.

SEC. 2653. Each person charged with taxes on a tax duplicate in the hands of a county treasurer may pay the full amount thereof on or before the twentieth day of December, or one-half thereof before such date, and the remaining half thereof on or before the twentieth day of June next ensuing, but all road taxes so charged shall be paid prior to the twentieth day of December. (R. S. Sec. 1091.)

As to when taxes are due under the act providing against the evils arising under the traffic in intoxicating liquors, see G. C. § 6072. (104 v. 166.)

While taxes may be paid semi-annually, if the lessee who is bound to pay taxes to the lessor by his lease, fails to make such payment, the lessor may pay the whole amount at the first day for payment, and maintain an action against the lessee for the whole amount at once: *Campbell v. Luck*, 2 O. C. C. (N. S.) 129, 15 O. C. D. 356.

If taxes are illegally assessed and the first half of the tax so assessed exceeds the entire amount actually due, the taxpayer who has paid the first installment, believing it to be a valid tax, may enjoin the collection of the second installment: *Cozad v. Hubbard*, 18 O. C. C. 294, 10 O. C. D. 162.

See to the same effect with reference to special assessments: *Cincinnati v. James*, 55 O. S. 180.

This section applies to the time for paying taxes, which are charged upon a duplicate in the hands of a county treasurer; and it does not include taxes which have been omitted and which subsequently have been added: *Schott v. Burckhardt*, 2 O. N. P. 90, 3 O. D. (N. P.) 279.

This section applies to the time for paying taxes, which are charged upon a duplicate in false returns or omission to make returns or placing the same upon the duplicate of the county: *Topliff v. Shields*, 1 O. D. (N. P.) 661, 32 Bull. 74.

Apportionment of installments.

SEC. 2654. When taxes charged against the property of a person are so paid by installments, each such payment, exclusive of road taxes, shall be apportioned among the several funds for which taxes have been assessed. (R. S. Sec. 1092.)

Payment of taxes in proportion.

SEC. 2655. If a person desires to pay only a portion of a tax charged on real estate otherwise than in such installments, such person shall pay a like proportion of all the taxes charged thereon for state, county, township or other purposes, exclusive of road taxes. No person shall be permitted to pay one or more of such taxes without paying the others in like proportion, except only when the collection of a particular tax is legally enjoined. (R. S. Sec. 1093.)

This section applies to cases in which a taxpayer wishes to pay a portion of all taxes which are assessed and levied for all purposes. It does not apply to cases in which a certain tax is illegal and the taxpayer wishes to pay only the legal taxes: *Railway v. Stewart*, 13 O. C. C. 359, 7 O. C. D. 193.

Extension of time for payment of taxes.

SEC. 2657. The county commissioners of any county by resolution spread upon their journal may extend the time of payment of taxes from June twentieth to July twentieth of the same year and from December twentieth to January twentieth of the following year. In all cases where such half of a tax other than on real estate has not been paid on the twentieth day of December or on the twentieth day of the following January, if the time has been so extended, the whole amount of taxes other than on real estate for the current year so charged shall be due and delinquent, and shall be collected in the manner and with the penalty provided in the preceding section. (R. S. Sec. 1094.)

Treasurer shall not purchase county warrants.

SEC. 2680. No county treasurer shall contract for or purchase, directly or indirectly, any warrant issued by the county of which he is treasurer, at a discount upon the sum due thereon. If he contracts for or purchases any such warrant, he shall not be allowed, on settlement, the amount of it, or any part thereof, and shall forfeit the whole amount due thereon, to be recovered in an action in the name of the state, for the use of the county. (R. S. Sec. 1112.)

Settlement with auditor.

SEC. 2683. On or before the fifteenth day of February, in each year, the county treasurer shall settle with the county auditor for all taxes that he has collected at the time of making the settlement. On or before the tenth day of August in each year, he shall settle with the auditor for all taxes that he has collected at time of making such settlement, not included in the preceding February settlement. At each such settlement, the auditor shall allow to the treasurer on the moneys collected on the duplicate, and accounted for by him, his fees, at the rate or percentage allowed by law, at a full settlement of the county treasurer. (R. S. Sec. 1115.)

The county treasurer can not refuse to pay to the city treasurer, the city's share of taxes collected by the county treasurer, even though such taxes were paid under protest and to avoid distraint, and although the county treasurer may be personally liable therefor: *Ratterman v. State*, 44 O. S. 641.

Annual settlement with commissioners.

SEC. 2684. On the first Monday of September, each year, the county treasurer shall make a full settlement with the county commissioners. (R. S. Sec. 1116.)

Effect of receiving bank checks by treasurer.

SEC. 2744. A county treasurer may receive checks, but such receipt shall in no manner be regarded as payment. No sum shall be considered paid until the money therefor has been received by the treasurer or a depository. No responsibility shall attach in any manner directly or indirectly to a treasurer, his sureties or the county by reason of the receipt of a check and collection of checks shall be entirely at the risk of the person turning them into the treasury. (99 v. 468, § 13.)

Referred to and held to be constitutional: State, ex rel., v. Commissioners, 4 O. N. P. (N. S.) 481, 17 O. D. (N. P.) 451 [affirmed, State, ex rel., v. Oviatt, 8 O. C. C. (N. S.) 567.]

County treasurer may open tax-receiving offices.

SEC. 2746. When, in his opinion, necessary, the county treasurer may open not to exceed one office in each township for the receiving of taxes. Such office shall be in a city or village in which is located a bank of deposit. The treasurer, his deputy or clerks, may attend at such office and receive taxes on any day or days prior to the twentieth day of June and the twentieth day of December of each year. They may remove from the county treasury to the place of collection records necessary for the receiving of taxes upon the day or days so fixed for that purpose. (100 v. 76, § 1.)

Notice to taxpayer.

SEC. 2747. The county treasurer may fix the time when and place at which taxes will be received, as provided in the preceding section. Two weeks' notice thereof shall be given by publication in a newspaper of general circulation in the corporation or township within which the place of collection is located and by posting notices thereof in four public places therein. (100 v. 76, § 2.)

CHAPTER THIRTY-SIX.

COLLECTION OF TAXES. (Continued.)

DELINQUENT TAXES.

SECTION

2656. Treasurer to collect by distress; penalty.
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SECTION

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Penalty on delinquent taxes.

SEC. 2656. When one-half of the taxes charged against any entry on a tax duplicate in the hands of a county treasurer is not paid on or before the twentieth day of December next after being so charged, or when the remainder of such tax is not paid on or before the twentieth day of June next thereafter, the county treasurer shall proceed to collect it by distress or otherwise together with the penalty of five per cent. on the amount of tax so delinquent, which penalty shall be paid into the treasurer's fee fund. (R. S. Sec. 1094.)

It was held that the treasurer was not entitled to the five per cent. penalty in a suit brought by the prosecuting attorney in *Hartman v. Hunter*, 8 O. C. C. 623, 4 O. C. D. 200. [This case was reversed by *Hartman v. Hunter*, 56 O. S. 175, on the ground that the entire cause of action, an assessment for the construction of a township ditch, was barred within six years from the time that the cause of action accrued by G. C. § 11222.] See G. C. 2670.

The expense of attorney's fees in a suit by a county treasurer to collect taxes is one of the expenses which the county commissioners are required to allow: *State, ex rel., v. Commissioners*, 26 O. S. 364.

After delinquent assessments for street improvements have been certified to the county auditor, they are in the hands of the county treasurer for collection, and the municipal corporation can not then bring action thereon: *Fremont v. Hayes*, 4 O. N. P. 379, 7 O. D. (N. P.) 263.

The penalty of five per centum as compensation to county treasurers, provided in this section, is to be limited to the original delinquent tax, and is not collectible on any subsequent penalty that may be charged upon the duplicate against the property on account of such original delinquency: *Hunter v. Borck*, 51 O. S. 320.

To entitle county treasurers to the commission of five per cent., allowed under this section, they must proceed to collect and must in fact collect the delinquent taxes by distress; or under the provisions of G. C. §§ 2660, 2665 and 2667 to 2673; or by special effort in person or through an agent: *Hunter v. Borck*, 51 O. S. 320.

Collection of overdue taxes by distress.

SEC. 2658. When taxes are past due and unpaid, the county treasurer may distrain sufficient goods and chattels belonging to the person with such taxes, if found within the county, to pay the taxes so remaining due and the costs that have accrued. He shall immediately advertise in three public places in the township where the property was taken the time and the place it will be sold. If the taxes and costs accrued thereon are not paid before the day appointed for such sale, which shall be not less than ten days after the taking of the property, the treasurer shall sell it at public vendue or so much thereof as will pay such taxes and the costs. (R. S. Sec. 1095.)

This provision does not violate the constitutional rights of a foreign insurance company, nor does it deprive it of its property without due process of law: *Insurance Co. v. Bowland*, 196 U. S. 611, 14 O. F. D. 543, 2 O. L. R. 515.

Distress is one of the most ancient methods of enforcing the payment of taxes known to law, and it has frequently received the sanction of the courts: *Insurance Co. v. Bowland*, 196 U. S. 611, 14 O. F. D. 543, 2 O. L. R. 515.

Before there can be a recovery by action on a distress, it must appear to have been required under some law of the state that the property levied on should have been returned for taxation: *Insurance Co. v. Bowland*, 196 U. S. 611, 14 O. F. D. 543, 2 O. L. R. 515.

If a county treasurer seizes property to pay a tax, assessed without any color of law for its assessment, or under an unconstitutional law, he is liable as a trespasser; but where there is a valid law for the tax, and the illegality of the particular assessment is, owing to some error or omission of those charged with the execution of the law prior to the treasurer's being called upon to act, and the duplicate is regular on its face, and duly certified, he is not liable for collecting the tax. In such a case the duplicate affords as ample protection to the treasurer as does an execution, regular on its face, to the sheriff: *Loomis v. Spencer*, 1 O. S. 153; *Thompson v. Kelly*, 2 O. S. 647; *Bank v. Smith*, 7 O. S. 42.

A claim for over-due taxes on personal property in the hands of a receiver is a lien thereon, entitled to priority over general creditors: *Hamilton v. Beggs Co.*, 7 O. L. R. 397.

If a taxpayer believes that a tax is illegal, he may test the validity thereof by a suit to enjoin the collection thereof: *Aultman & Taylor Co. v. Brumfield*, 102 Fed. 7, 10 O. F. D. 227.

This section, together with G. C. §§ 2659 to 2662, apply to personal property, and do not apply to an action to collect taxes on real property: *State, ex rel., v. Gibson*, 1 O. N. P. (N. S.) 566, 14 O. D. (N. P.) 513 [affirmed, without report, *State, ex rel., v. Gibson*, 70 O. S. 424].

The remedy of distraint for taxes given to the county treasurer, under section 2658, G. C., is by far the most effective and all means should be exhausted by the county treasurer before calling upon the prosecuting attorney to conduct litigation. It is within the power of the prosecuting attorney to mandamus the county treasurer and thereby compel him to do his duty, under section 2658, G. C.: *A. G. R. 1913, p. 1233*.

Under the provisions of section 2658, G. C., it is the duty of the county treasurer, acting in person or through his deputy, to distraint sufficient goods and chattels belonging to a person charged with delinquent personal taxes, if such goods and chattels can be found in the county, to pay such taxes and accrued costs, and, upon such distraint being made, it is his duty to advertise and sell said goods and chattels, or so much thereof as will pay said taxes and costs in the manner provided in said section, provided said taxes and costs are not paid by the owner of said property before the day appointed for said sale. The county treasurer is neither required nor authorized by the provisions of section 2658, G. C., to resort to a justice's court for the purpose of collecting delinquent personal taxes. *A. G. R. 1915, p. 617*.

Fees for sale by distress.

SEC. 2659. For making distress and sale for the payment of taxes, the treasurer shall be allowed the same fees as are allowed to constables for making levy and sale of property on execution. Traveling fees shall be computed from the seat of justice of the county to the place of making the distress. (R. S. Sec. 1096.)

Proceedings when unable to collect taxes by distress.

SEC. 2660. If the county treasurer is unable to collect by distress taxes assessed upon a person or corporation or an executor, administrator, guardian, receiver, accounting officer, agent or factor, he shall apply to the clerk of the court of common pleas in his county at any time after his semi-annual settlement with the county auditor, and the clerk shall cause notice to be served upon such corporation, executor, administrator, guardian, receiver, accounting officer, agent or factor, requiring him forthwith to show cause why he should not pay such taxes. If he fails to show sufficient cause, the court at the term to which such notice is returnable shall enter a rule against him for such payment and the costs of the proceedings, which rule shall have the same force and effect as a judgment at law and shall be enforced by attachment or execution or such process as the court directs. (R. S. Sec. 1097.)

Under this section, the treasurer of a county may have a rule against the receiver of a railroad for the payment of taxes due and unpaid. The state is not included in G. C. § 9066, and for this reason a superiority of its claim is not affected thereby: *Treasurer v. Dale*, 60 O. S. 180.

If a tax is collected under the provisions of this section, the five per cent penalty as compensation to the treasurer is to be allowed: *Hunter v. Borck*, 51 O. S. 320.

In a proceeding under this section, the individual name of the treasurer need not appear as the plaintiff. Whether his individual name so appears or not, the proceeding does not abate by reason of a change of officers. The court may continue such proceeding beyond the term. In such proceeding only the tax and the penalty can be recovered: *Bridge Co. v. Mayer*, 31 O. S. 317.

Reasonable compensation for attorneys' fees in prosecuting suits, which it is the duty of the treasurer to bring for the collection of taxes, come within the expenses which the county commissioners are required to allow: *State, ex rel., v. Commissioners*, 26 O. S. 364.

For case involving a rule to show cause why a corporation should not pay a tax, see *Knoup v. Bank*, 1 O. S. 603.

Duty as to non-resident delinquent on personal property.

SEC. 2661. In making return of the delinquent list of personal property to the auditor, the treasurer shall note on the margin thereof the county and state to which the delinquent taxpayer has removed, or in which he resides, with the date of his removal, if able to ascertain such fact. (R. S. Sec. 1098.)

Shall send account of taxes to the treasurer of non-resident's county.

SEC. 2662. Immediately after the settlement with the county auditor, the treasurer shall make and forward to the treasurer of the county to which a delinquent taxpayer has removed, or in which he resides, a statement of taxes so assessed and not paid, specifying the value of the property on which levied, and the amount levied thereon, to which he shall add twenty-five per cent. of the tax so levied, if such taxpayer left the county in which such taxes were levied after the time required by law for the county auditor to deliver the tax duplicate to the county treasurer. If he left the county previous to such time, the treasurer shall not add the twenty-five per cent. (R. S. Sec. 1099.)

Collection of such taxes.

SEC. 2663. Immediately on the receipt of such statement, the county treasurer shall collect such taxes and per cent. from the person so charged, for which services he shall be allowed the same fees as county treasurers for collecting delinquent taxes by process, to be collected from the person against whom such taxes are charged. (R. S. Sec. 1100.)

Return of treasurer to whom account is sent.

SEC. 2664. For the collection of all taxes, penalties, and costs, mentioned in the preceding section, the county treasurers shall have the same powers given by any law for the collection of taxes. All taxes collected by any county treasurer pursuant to the provisions of such section shall be by him transmitted, in the safest and most convenient way, to the treasurer of the county to which such taxes belong. At the same time he shall forward a statement to the auditor of the county of the amount so collected and from whom. If he is unable to collect such taxes, he shall return the original statement to the auditor of the county from which it was sent, with his official certificate why they could not be collected. (R. S. Sec. 1101.)

The statement, "payment not tendered," in the official certificate showing why the tax could not be collected, is not a sufficient reason for placing the property on the delinquent list: *Matthews v. Lewis*, 18 O. C. C. 134; sub nomine, *Mathers v. Lewis*, 9 O. C. D. 843.

Proceedings where delinquent taxpayer has dues within the state.

SEC. 2665. If a person charged with a tax has not sufficient property which the treasurer can find to distrain to pay such tax, but has moneys, or credits due, or coming due him from any person within the state, known to the treasurer, or if such taxpayer has removed from the state or county, and has property, moneys, or credits due, or coming due him in the state, known to the treasurer, in every such case, the treasurer shall collect such tax and penalty by distress, attachment, or other process of law. He may make affidavit that the residence of such taxpayer is to him unknown, or that he is not a resident of the county where such property is found or where such debtor resides, or that such taxpayer has not property in the county sufficient to distrain to pay such tax. Thereupon an attachment, with garnishee process, shall be issued and such proceedings had, and such judgment rendered for taxes, penalty, and costs, as are lawful in other cases of attachments. If the treasurer serves upon any person indebted to such taxpayer a written notice, stating the amount of delinquent tax and penalty due, such debtor may, after the service of such notice, pay such tax and penalty to the treasurer, whose receipt therefor shall be a full discharge of so much of the indebtedness, as equals the tax and penalty so paid. (R. S. Sec. 1102.)

If the county treasurer proceeds, under this section, to collect a tax in accordance with the provisions thereof, he is entitled to the five per cent compensation on delinquent taxes: *Hunter v. Borck*, 51 O. S. 320.

A statute which provides that in an action to enforce an assessment, "a substantial defect in the construction of the improvement shall be a complete defense," undoubtedly applies in an action by the treasurer to collect such assessment: *Stone v. Viele*, 38 O. S. 314.

The county treasurer may not contract with an attorney to collect delinquent taxes on real estate, or employ a collector to collect delinquent personal taxes.

The expenditure of public funds for such purpose would be illegal, and if such expenditure has been made it is the duty of the prosecuting attorney, under provision of section 2921, G. C., to bring an action in the name of the state to recover for the use of the county such funds so illegally drawn from the county treasury. *A. G. R.* 1916, p. 2026.

May collect delinquent tax charged to him.

SEC. 2666. If a county treasurer, on making settlement with the county auditor, stands charged with any tax which remains unpaid, and receives no credit therefor in such settlement, the treasurer may collect such tax for his own use, at any time within one year after the settlement, either by distress and sale, or by action, in his own name, before any justice of the peace or court having jurisdiction thereof. (R. S. Sec. 1103.)

Action by treasurer for unpaid taxes or assessments.

SEC. 2667. When taxes or assessments, charged against lands or lots or parcels thereof upon the tax duplicate, authorized by law, or any part thereof, are not paid within the time prescribed by law, the county treasurer, in addition to other remedies provided by law may, and when requested by the auditor of state, shall enforce the lien of such taxes and assessments, or either, and any penalty thereon, by civil action in his name as county treasurer, for the sale of such premises, in the court of common pleas of the county, without regard to the amount claimed, in the same way mortgage liens are enforced. (R. S. Sec. 1104.)

Taxes levied under the Dow law are a lien prior to mortgages, which antedate such taxes in point of time: *Trust Co. v. Stich*, 71 O. S. 459.

The state is not liable for any part of the expenses of a county treasurer in collecting taxes, except where the statute expressly creates such liability. Under this section and the following sections through G. C. § 2673, the state is not liable: *State ex rel., v. Cappeller*, 39 O. S. 207.

An action to enforce the lien of an assessment, commenced within six years of the passage of the act authorizing such action, if such assessment shall so long continue to be a lien upon the property, is not barred by the statute of limitations: *Brenchweh v. Drake*, 31 O. S. 652.

That an action to enforce an assessment for the construction of a township ditch was barred in six years after the cause of action arose, under G. C. § 11222, was decided in *Hartman v. Hunter*, 56 O. S. 175.

Advancement of case.

SEC. 2668. Upon the application of the plaintiff, the court of common pleas shall advance such causes on the docket, so that they may be first heard. (R. S. Sec. 1104.)

Petition and evidence.

SEC. 2669. Having made the proper parties, it shall be sufficient for the treasurer to allege in his petition that the taxes and assessments, or either, are charged on the tax duplicate against such premises, the amount thereof, and are unpaid, and he shall not be required to set forth in the petition any other or further special matter relating thereto. On the trial a certified copy of the entry on the tax duplicate, shall be prima facie evidence of such allegations and of the validity of such taxes and assessments. (R. S. Sec. 1104.)

If the defendant admits that part of the tax was valid, he must allege in his answer, the facts which make the rest of such tax illegal or such answer is insufficient as the defense to any part of the tax: *Hunter v. Austin*, 9 O. C. C. 583, 6 O. C. D. 480.

A petition to enforce a tax is good as against demurrer, unless it appears on its face that under the existing laws, the property which is listed for taxation is not subject thereto: *Scott v. Athens*, 1 O. N. P. 94, 1 O. D. (N. P.) 84. (A township hall erected by a village and paid for by taxation was held to be subject to taxation, if leased for private purposes.)

Judgment and decree.

SEC. 2670. Judgment shall be rendered for such taxes and assessments, or any part which the court shall order such premises to be sold without appraisement. From the proceeds of the sale the costs shall be first paid, next the judgment for taxes and assessments, and the balance shall be distributed according to law. The owner or owners of such property shall not be entitled to any exemption against such judgment, nor shall any statute of limitations apply to such action. When the lands or lots stand charged on the tax duplicate as forfeited to the state, it shall not be necessary to make the state a party, but it shall be deemed a party through and represented by the county treasurer. (R. S. Sec. 1104.)

In an action by the county treasurer to collect personal taxes, the six years' period of limitation prescribed by G. C. § 11222, does not apply, since such action, while brought in the name of the treasurer, is prosecuted in the interests of the state and for its benefit: *Wastenev v. Schott*, 58 O. S. 410 [distinguishing *Hartman v. Hunter*, 56 O. S. 175.]

Joinder of causes of action.

SEC. 2671. In such proceedings the county treasurer may join in one action all or any number of lots or lands, but the decree shall be rendered severally or separately, and any proceedings may be severed in the discretion of the court for the purpose of trial, error or appeal, where an appeal is allowed, and the court shall make such order for the payment of costs as shall be deemed equitable and proper. (R. S. Sec. 1104.)

Contract for collection of unpaid taxes or assessments.

SEC. 2672. When lands or lots or parcels thereof, advertised for and offered at both delinquent and forfeited tax sales and returned as unsold at both, have become forfeited to the state by reason of the unpaid taxes thereon, the county treasurer may contract with

a suitable person to collect the taxes or assessments thereon at a compensation deemed just and proper, subject to the approval of the county commissioners, but not to exceed twenty-five per cent. of the amount collected and shall be payable therefrom. Such allowances shall be apportioned ratably by the county auditor, among the funds entitled to share in the distribution of such taxes, and the expense of collection under the contract shall be borne by the person so contracting, who may proceed under this and the preceding sections, or as otherwise provided by law. (R. S. Sec. 1104.)

Collection when treasurer fails to enforce lien.

SEC. 2673. When requested so to do by the auditor of state, if a county treasurer refuses or neglects to enforce a lien for such taxes and assessments, or either, and penalty thereon, by civil action as hereinbefore provided, the auditor of state may direct the prosecuting attorney of the county to enforce such lien, in a civil action in the name of the state. Such suit shall be brought and prosecuted as hereinbefore provided. For such services the prosecuting attorney shall be allowed by the county commissioners from the amount collected not to exceed twenty-five per cent. thereof. The expense of such collection shall be borne by the prosecuting attorney, and all allowances shall be apportioned ratably by the county auditor, among all the funds entitled to share in the distribution of such taxes. (R. S. Sec. 1104.)

How treasurer to collect delinquent personal tax.

SEC. 5697. When personal taxes stand charged against a person, and are not paid within the time prescribed by law for the payment of such taxes, the treasurer of such county, in addition to any other remedy provided by law for the collection of personal taxes, shall enforce the collection thereof by a civil action in the name of such treasurer against such person for the recovery of such unpaid taxes. It shall be sufficient, having made proper parties to the suit, for the treasurer to allege in his bill of particulars or petition that the taxes stand charged upon the duplicate of the county against such person, that they are due and unpaid, and that such person is indebted in the amount appearing to be due on the duplicate, and the treasurer need not set forth any other or further special matter relating thereto. The tax duplicate shall be prima facie evidence on the trial of the action, of the amount and validity of the taxes appearing due and unpaid thereon, and of the non-payment thereof, without setting forth in his petition any other or further special matter relating thereto. (R. S. Sec. 2859.)

This section applies only where the taxes have not been paid in conformity with the requirements of the statute: *Miller v. Bank*, 46 O. S. 424.

This section gives a remedy to the treasurer to proceed by civil action in which the defendant is given an opportunity to make a defense at law, and to have trial by jury: *Grether v. Wright*, 75 Fed. 742, 23 C. C. A. 498, 10 O. F. D. 49, 37 Bull. 63.

The action by the county treasurer for the collection of delinquent personal taxes authorized by this section, must be for taxes standing charged on the duplicate of the current year, or the delinquent duplicate: *Hull v. Alexander*, 69 O. S. 75.

It is the duty of the treasurer to institute an action for the collection of delinquent taxes promptly when such taxes are those entered upon the duplicate. Action may be brought for the collection of all omitted taxes for the current year, but no more, unless there was a false return, in which case the action may be brought for the omitted taxes for preceding years: *Bridge Co. v. Yost*, 22 O. C. C. 376, 12 O. C. D. 448.

If the duplicate does not show that the auditor has made the entry required by G. C. § 5694, a penalty cannot be added to the delinquent taxes: *Lee v. Sturges*, 46 O. S. 153.

Where suit is brought by the county treasurer under favor of this section, to enforce the collection of personal taxes which stand charged upon the duplicate in the name of the person against whom such suit is instituted, the board of county commissioners is without authority to compromise or settle such suit or to remit or release, in whole or in part, the taxes sued for: *Peter v. Parkinson*, 83 O. S. 36.

The rule that statutes of limitation do not run against the state unless it is expressly so provided, is applicable in actions where the state, though not a party to the record, is the real party in interest: *Wastenev v. Schott*, 58 O. S. 410 [affirming *Schott v. Wastenev*, 13 O. C. C. 339, 7 O. C. D. 222].

Where, before the accruing of a cause of action, a party procures the allowance of an injunction restraining the commencement of an action upon such cause, and its continuance in force until the period allowed by the statute of limitations for commencing such action has expired, such party will not, after such injunction has been dissolved, because wrongfully obtained, be permitted in a court of equity to plead the statute of limitations as a bar to such action: *Treasurer v. Martin*, 50 O. S. 197.

Judgment shall be rendered.

SEC. 5698. On the trial of the action provided in the next preceding section, if it is found, that such person is indebted, judgment shall be rendered in favor of the treasurer

prosecuting the action as in other cases. The judgment debtor shall not be entitled to the benefit of the laws for stay of execution or exemption of homestead, or other property, from levy or sale on execution in the enforcement of such judgment. (R. S. Sec. 2859.)

Only the amount of the tax and penalty, without interest for the time prior to the rendition of the judgment can be recovered in a proceeding under this and the preceding sections: *Bridge Co. v. Mayer*, 31 O. S. 317.

Expenses which are reasonably incurred as attorney's fees by the county treasurer in prosecuting suits under this and the preceding sections must be allowed by the county commissioners: *State, ex rel., v. Commissioners*, 26 O. S. 364.

The attorney who has maintained the action provided for by this and the preceding section, and who has collected a judgment in favor of the treasurer cannot deduct his fees and expenses from the proceeds of such judgment; but the entire amount of such judgment must be paid into the county treasury and disbursed only upon the warrant of the auditor: *Mengert v. Printing Co.*, 50 Bull. 414.

CHAPTER THIRTY-SEVEN.

COLLECTION OF TAXES. (Continued.)

MISCELLANEOUS.		SECTION	
SECTION			
5671.	When lien of state for taxes attaches.	5687.	Lien on land for money advanced.
5674.	Collection of tax of transient trader.	5688.	Liability of tenants in dower, etc., for neglect.
5675.	Agent of express or telegraph company to pay taxes thereof.	5689.	Lien, etc., for taxes paid by lien holder.
5676.	Unlawful to act as agent, etc., for certain companies when taxes are unpaid.	5690.	Rights of joint owner paying his portion of tax.
5677.	Railroad company shall not transport anything for such company.	5691.	Persons not paying liable as if partition had not been made.
5680.	Owner of life estate guardian, etc., to pay tax.	5692.	Lands sold at judicial sale; how tax on same paid.
5681.	Payment of taxes on land; agents and attorneys.	5693.	Part owner shall have lien for tax, when.
5682.	Payment by other person than owner.	5699.	Auditor shall ascertain amount.
5683.	Lien for such payment.	5700.	County officer allowed counsel, when.
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5685.	Executors same.	5702.	Abstract of duplicate, etc., transmitted to auditor of state.
5686.	Agents and attorneys same.	5703.	Abstract of personal property.

When lien of state for taxes attaches.

SEC. 5671. The lien of the state for taxes levied for all purposes, in each year, shall attach to all real property subject to such taxes on the day preceding the second Monday of April, annually, and continue until such taxes, with any penalties accruing thereon, are paid. All personal property subject to taxation shall be liable to be seized and sold for taxes. The personal property of a deceased person shall be liable, in the hands of an executor or administrator, for any tax due on it from the testator or intestate. (R. S. Sec. 2838.)

Taxes and penalties on additions disclosed by inventory of estate have priority over debts, see G. C. § 10662.

By virtue of this section, the lien of the state for taxes is paramount to all other liens: *Trust Co. v. Root*, 72 O. S. 535.

Liens which are valid under the laws of Ohio have equal validity and priority under bankruptcy proceedings; and the lien of the state for taxes is prior to all other liens: In the matter of *O'Connor*, 95 Fed. 943, 11 O. F. D. 458.

Taxes on real property in Ohio become a lien on the day preceding the second Monday in April in each year; and when the amount of the taxes is subsequently determined, such assessment relates back to the date at which such taxes become a lien: *Loomis v. Von Phul*, 2 O. N. P. (N.S.) 423, 15 O. D. (N.P.) 37.

Taxes become a lien on real property on the first moment of the day preceding the second Monday in April; and the trustees of a decedent who died on that day becomes liable therefor: *Estate of O'Brien*, 2 O. N. P. (N.S.) 421.

Taxes due upon real property are a personal debt of the person in whose name the lands are listed when the taxes accrue, unless such lands are not the property of such person and are erroneously charged in his name for taxation; in addition to being a lien upon such real property: *Créps v. Baird*, 3 O. S. 278.

The state has a lien upon all land which is not exempt from taxation; which lien is perpetual, and which cannot be affected by sale, conveyance, transfer, or lapse of time; and it can be removed only by the payment of all taxes, penalty and interest due upon the land: *Monroe v. Lessee of Morris*, 7 O. (pt. 1) 262.

Where a deed of conveyance, with a covenant, that, at the time of the ensembling and execution thereof, the premises are clear and free of all incumbrances whatever, is executed subsequent to the day fixed by the statute when the lien of the state for the taxes of the current year attaches, such lien is an incumbrance within the scope of the covenant, and for which an action on the covenant will lie: *Long v. Moler*, 5 O. S. 272.

While this section fixes the date in each year at which the lien for taxes attaches, it does not prevent levies being made later in the year, and put on the duplicate of the year. *State v. Roose*, 90 O. S. 345.

Under the present state of the statutes, the tax against real estate is a right in rem, and can only be satisfied by the state by action against the land itself, regardless of the ownership of the land. *A. G. R. 1912*, p. 1444.

Collection of tax of transient trader.

SEC. 5674. When the county auditor certifies to the county treasurer the amount of tax assessed upon a return made by or for a transient trader, under chapter three of this

title, the treasurer shall forthwith enter it upon the duplicate and notify such trader of the amount assessed. If he neglects or refuses to pay the amount within twenty-four hours after receiving such notice, the treasurer shall collect it by any process or proceeding authorized in a case of delinquent personal property tax. (R. S. Sec. 2841.)

Agent of express or telegraph company to pay taxes thereof.

SEC. 5675. The agent of an express or telegraph company shall retain in his hands and pay to the county treasurer, the amount of all taxes assessed against such company. In default of such payment, the treasurer shall collect the tax as in other cases of delinquent personal property tax. When there is more than one such agent of the same company in one county, the agent thereof in the principal city, or village of such county, may assume the payment of such tax, and upon so doing, the other agents in the county shall not be required to retain funds to pay the tax. (R. S. Sec. 2842.)

Where a corporation is assessed on its gross receipts, and pays such assessment to avoid the penalties and disabilities incurred by a refusal to pay, but under protest, and after notifying the treasurer that an action would be brought to recover back; such payment is not voluntary, and an action may be maintained to recover back the amount so paid, if the tax is illegal: *Telegraph Co. v. Mayer*, 28 O. S. 521.

Unlawful to act as agent, etc., for certain companies when taxes are unpaid.

SEC. 5676. If the taxes assessed against an express, telegraph, telephone, or insurance company, in any county in this state, remains due and unpaid to the treasurer of the county, for twenty days after the time provided by law for the payment thereof, no person or corporation shall act as agent, or transact any business for such company so in default, until the tax, interest, and penalty are paid. (R. S. Sec. 2843.)

A payment to the county treasurer, by an express company, of an illegal tax on its gross receipts from interstate business, under protest, and with notice of an intention to bring action to recover back the amount paid, is an involuntary payment when made to avoid the penalties imposed by this section, and an action may be maintained to recover back the amount so paid. Such payment of the illegal tax, under protest and with notice, becomes involuntary by reason of the danger of destruction to the defaulting company's business, through the refusal of others to convey or carry packages, parcels, or merchandise, for the company, on account of the statutory penalties for conveying the same: *Ratterman v. Express Co.*, 49 O. S. 608.

Railroad company shall not transport anything for such company.

SEC. 5677. After the default in payment of taxes named in the next preceding section, a railroad company which, directly or indirectly, conveys or carries for such defaulting express, telegraph, telephone, or insurance company, a package of money, merchandise, or other articles, or transmits a telegraphic message, after having notice of such default, for each offense, shall forfeit and pay a sum equal to the amount of such tax due and unpaid, with the interest and penalty thereon, to be recovered by an action in the name of the state, in the county where the tax is assessed, with costs of suit. (R. S. Sec. 2843.)

Owner of life estate, guardian, etc., to pay tax.

SEC. 5680. Each person shall pay tax for the lands or town lots of which he is seized for life, or in dower, or which he has care of as guardian or executor. He shall also pay tax for the lands or town lots which he has care of as agent or attorney, if he has sufficient funds of the principal in his hands. (R. S. Sec. 2845.)

This section shows that the intention of the legislature was to confer upon the guardian the control of the estate of his ward for the purpose of taxation; and to hold the guardian liable to the ward for the abuse of such power: *Campbell v. Park*, 32 O. S. 544.

This section is cited to show that a widow is bound to pay taxes upon the lands which she holds as dower; and accordingly if dower is set off to her in unimproved woodland, she may sell timber therefrom for the purpose of raising money to pay such taxes: *Crockett v. Crockett*, 2 O. S. 181.

Payment of taxes on land; agents and attorneys.

SEC. 5681. Each person holding lands shall pay the tax assessed thereon each year, but an agent or attorney shall not be required to pay such taxes, unless sufficient money of his principal is in his hands to pay them. (R. S. Sec. 2847.)

If land has been conveyed by a perpetual lease, and the lessee has not entered into a covenant to pay taxes, and the lessee has constructed improvements upon such real property whereby the valuation thereof for taxation is increased, he is bound to pay such proportion of the taxes as is due to such increase in valuation: *Joslyn v. Spellman*, 9 Dec. Rep. 258, 12 Bull. 7.

This section together with G. C. § § 5682 and 5683 are cited to show that while taxes are levied and assessed upon property, they are also a personal obligation of the owner of such property, which he is legally liable to pay. Accordingly if the owner of a fee has granted an estate in the second story of the building, and such owner of the fee is under a perpetual

covenant to rebuild in case of fire or other casualty, the lessee to have the same rights in the new building as in the old, the interest and the estate of the lessee is taxable in his name, if such appears by the terms of the lease to have been the intention of the parties: Cincinnati College v. Yeatman, 30 O. S. 276.

Payment by other person than owner.

SEC. 5682. Each person owning lands, may authorize or consent to the payment by another, of the taxes levied upon such lands. A person so paying such taxes shall first obtain from the owner or owners of such lands a certificate of authority to pay them, signed in the presence of two witnesses, and acknowledged before an officer authorized to administer oaths. Such certificate shall contain an accurate description of the property as shown by the tax duplicate, the amount of the taxes levied thereon, the year for which they were levied, the name of the person authorized to pay them, and the date of the payment thereof. (R. S. Sec. 2847.)

Lien for such payment.

SEC. 5683. The person so paying such taxes, within ten days from the date of the payment thereof, shall file such certificate in the office of the county recorder for record. When the certificate has been filed the amount thereof with interest at eight per cent. per annum from the date of the payment of such tax, shall become a lien upon such real estate in preference to all liens thereafter attaching to the property and in preference to all pre-existing liens the holders of which have executed and acknowledged such certificate of authority. The money so paid, with the interest thereon, may be recovered by action for money paid to his use against the person legally liable for the payment of the tax. Such action may be brought by the person so paying the tax, at any time after the expiration of one year from the date of the payment thereof. The certificate, so filed with the recorder, shall be recorded and cancelled, in like manner as mortgages on real estate, in a book to be separately kept and indexed by him for that purpose, and the recorder shall receive such fees as are prescribed by law for recording real estate mortgages. (R. S. Sec. 2847.)

Guardian's liability for neglect.

SEC. 5684. Each person holding lands as guardian, neglecting or refusing to list or pay the taxes thereon, in manner aforesaid, shall be liable to his ward or wards for any damage he may have sustained by such neglect or refusal. (R. S. Sec. 2848.)

Executors.

SEC. 5685. Each person being seized or having the care of lands, as executor, and neglecting or refusing to pay the taxes thereon, in manner aforesaid, shall be liable to the devisee or devisees of the person whose executor he is, for any damage occasioned by such neglect. (R. S. Sec. 2849.)

Agents and attorneys.

SEC. 5686. Each person having the care of lands, as agent or attorney, having funds of the principal in his hands, neglecting or refusing to pay the taxes on such lands, shall be liable to his principal for any damage such principal may have sustained by such neglect or refusal. (R. S. Sec. 2850.)

Lien on land, etc., for money advanced.

SEC. 5687. Each attorney, agent, guardian, or executor, seized or having the care of lands, who is subjected to any trouble or expense in paying the taxes thereon, or advances his own money for listing or paying the taxes thereon, shall be allowed a reasonable compensation for the time spent, the expenses incurred, and money advanced, which shall be a just charge against the person for whose benefit it was advanced. (R. S. Sec. 2851.)

If the cestui que trust has paid taxes upon the real property in which he has an equitable interest, such taxes are a lien upon the land and may be paid out of the trust fund: Gary v. May, 16 O. 66.

Liability of tenants in dower, etc., for neglect.

SEC. 5688. If any person, seized of lands in dower or for life, neglects to pay the taxes thereon, so that such lands are sold for the payment thereof, and within one year after such sale does not redeem them, according to law, he shall forfeit to the person or persons next entitled to such lands in remainder or reversion, all the estate which he has in such lands. The remainder man or reversioner may redeem the lands in like manner

as other lands are redeemed after having been sold for taxes. The person so neglecting shall be liable to the persons next entitled to the estate for all damages such persons have sustained by such neglect. (R. S. Sec. 2852.)

The forfeiture of the life estate herein provided for is valid and constitutional: *McMillan v. Robbins*, 5 O. 28.

The tax laws which exact forfeitures are regarded as penal laws in Ohio, and must be construed strictly: *Mathers v. Bull*, 6 O. N. P. 45, 9 O. D. (N. P.) 408.

No forfeiture of the estate of a life tenant accrues, under this section, from the failure of the tenant to pay the taxes on the land, in consequence of which the land is sold at delinquent tax sale, where, by reason of errors or irregularities in levying the tax or in making the sale, no valid deed can be made by the auditor to the purchaser at the tax sale: *Estabrook v. Royon*, 52 O. S. 318.

If forfeiture of a lease has been incurred by reason of a breach of a covenant to pay taxes, and such breach is not willful and is not the result of gross negligence and no demand has been made by the lessor prior to such forfeiture, equity will relieve against such forfeiture: *Eichenlaub v. Neil*, 10 O. C. C. 427, 6 O. C. D. 567 [affirmed, without report, *Neil v. Eichenlaub*, 56 O. S. 782].

In *Clason v. Ward*, 1 O. N. P. 218, 1 O. D. (N. P.) 192, it was said that a dower right was not forfeited under this section, until the land was sold and one year thereafter had expired, but that it was immaterial whether the sale was valid or not.

The purchaser of an estate in remainder at a sale on foreclosure of a mortgage upon the estate, made subject to the life estate on which the remainder is limited, cannot claim a forfeiture of the life estate from the sale of lands at delinquent tax sale, and a failure to redeem within the time prescribed by this section, where the omission occurred prior to the foreclosure, and there is nothing to show but that the forfeiture was waived by the mortgagor: *Chaffee v. Foster*, 52 O. S. 358.

In *Anderson v. Messenger*, 158 Fed. 250, 85 C. C. A. 468, 16 O. F. D. 134, it was said that the interest of a life tenant cannot be forfeited for failure to pay assessments for local improvements.

Lien, etc., for taxes paid by lien holder.

SEC. 5689. A person having a lien upon real estate may pay the taxes which are a lien thereon, and the amount so paid, from the time of payment, shall be a lien upon such real estate in preference to all other liens. The money so paid may be recovered by action for money paid for his use against the person or persons liable for the payment of the taxes. (R. S. Sec. 2853.)

If the taxes appear to have been assessed legally upon the duplicate, and the mortgagee, without knowledge that such taxes are in fact illegal, has paid the same to protect his lien, the mortgagee may enforce his lien against the owner of the property for the full amount paid by him, and the owner of such property can recover the illegal or excessive amount thereof from the county: *Bates v. Peoples Association*, 42 O. S. 655.

If the property is sold under this section, a lienholder cannot stand by, see the property sold so as to impose a penalty, and then acquire title by an assignment of the certificate. He should pay the taxes and then recover the amount of such payment and the amount for which the certificate calls for, with simple interest, and without penalty thereon: *Insurance Co. v. Morrow*, 16 O. C. C. 351, 8 O. C. D. 419 [affirmed, without report, *Morrow v. Insurance Co.*, 61 O. S. 661.]

Rights of joint owner paying his portion of tax.

SEC. 5690. When a tract of land is owned by two or more persons, as joint tenants, co-partners, or tenants in common, and one or more of them has paid the tax, or tax and penalty, charged or chargeable on his or their proportion of such tract, and one or more of those remaining has failed to pay his or their proportion of the tax, or tax and penalty, charged or chargeable on said land, and partition of the land is made between them, the tax and penalty, so paid, shall be deemed to have been paid on the proportion of such tract, set off to the person or persons, who paid his or their proportion of the tax, or tax and penalty. (R. S. Sec. 2854.)

Where a person seized of lands as tenant in dower, neglects to pay the taxes thereon so long that they are sold for the payment of taxes, if one of several tenants in common of the remainder in fee of such lands purchase the lands at the tax sale, the purchase will be held to inure to the benefit of all the cotenants in remainder. The tenant in common so purchasing will be entitled to contribution from his cotenants toward the cost and expense incurred in the purchase of the tax title: *Clark v. Lindsey*, 47 O. S. 437.

Persons not paying, liable as if partition had not been made.

SEC. 5691. Such person or persons so paying the tax, or tax and penalty, shall hold the proportion of such tract, so set off to him or them, free from the residue of the tax, or tax and penalty charged on the tract before partition. The proportion of the tract set off to the person or persons who has not paid his or their proportion of the tax, or tax and penalty, shall be charged with the portion of the tax, or tax and penalty, remaining unpaid, in like manner as if partition had been made before the tax, or tax and penalty, had been assessed, and the proportion of the tract, originally listed for taxation, in the name or names of the delinquent person or persons. (R. S. Sec. 2854.)

How tax on lands sold at judicial sale paid.

SEC. 5692. When land so held by tenants in common are sold upon proceedings in partition, or taken by the election of any of the parties to such proceedings, or real estate is sold at judicial sale, or by administrators, executors, guardians, or trustees, the court shall order the taxes and penalties, and the interest thereon against such lands, to be discharged out of the proceeds of such sale or election. (R. S. Sec. 2854.)

Until the levy of taxes is made upon the duplicate, or until it can be made, no order can be made rightfully to discharge such taxes out of the proceeds of a judicial sale: *Hoglen v. Cohan*, 30 O. S. 436.

If real estate is sold at judicial sale, or by administrators, executors, guardians or trustees, on or after the first day of October, and taxes stand legally charged upon the tax duplicate against such real estate, such taxes, together with any penalty and interest thereon at the time of such sale may, under this section, be ordered to be discharged out of the proceeds of such sale: *Creps v. Baird*, 3 O. S. 277; *Ketcham v. Fitch*, 13 O. S. 201; *Hoglen v. Cohan*, 30 O. S. 436.

Under this section it is the duty of the court in judicial sales to order the taxes to be paid out of the proceeds thereof: *Scheid v. Scheid*, 5 O. D. (N. P.) 559; see, to the same effect, *Sandheger v. Brewing Co.*, 6 O. N. P. 410, 8 O. D. (N. P.) 592.

Installments which are properly entered upon the annual county duplicate should be collected the same as other taxes, and in case of a judicial sale of real estate, or a sale by administrators, executors, guardians or trustees, made after the last day of September in any year, such installments as stand unsatisfied upon such duplicate should be paid out of the proceeds of such sale, as provided as to other taxes in this section: *Makley v. Whitmore*, 61 O. S. 587.

This section does not apply to assessments for local improvements made by municipal corporations: *Cincinnati v. Lingo*, 13 O. C. C. 334, 7 O. C. D. 356 [affirmed, without report, *Cincinnati v. Sterritt*, 57 O. S. 654.]

When part owner shall have lien for tax.

SEC. 5693. A part owner, paying the tax on the whole tract or tracts of which he is a part owner, shall have a lien on the shares or parts of the other part owner for the tax paid in respect to their shares or parts, which, with interest thereon, he shall be entitled to receive on sale or partition of such lands, and the collection of which, with interest may enforce as any other lien or charge. (R. S. Sec. 2854.)

Auditor shall ascertain amount.

SEC. 5699. The county auditor shall carefully ascertain the net amount of taxes collected for each particular purpose. (103 v. 522. R. S. Sec. 2861.)

When county officer allowed counsel.

SEC. 5700. When an action has been commenced against the county treasurer, county auditor, or other county officer, for performing or attempting to perform, a duty authorized or directed by statute for the collection of the public revenue, such treasurer, auditor, or other officer, shall be allowed and paid out of the county treasury reasonable fees of counsel and other expenses for defending the action. The amount of damages and costs adjudged against him, with the fees, expenses, damages, and costs shall be apportioned ratably by the county auditor among all the parties entitled to share the revenue so collected, and be deducted by the auditor from the shares or portions of revenue at any time payable to each, including as one of the parties the state itself, as well as the counties, townships, cities, villages, school districts, and organizations entitled thereto. (R. S. Sec. 2862.)

This section applies only to suits commenced against the county treasurer or other county officers for performing or attempting to perform a duty in collecting the public revenue: *State, ex rel., v. Commissioners*, 8 O. N. P. (N. S.) 281.

Expenditures under this section in actions against county officers are to be pro rata among the parties entitled to share in the revenue so collected; and the state may accordingly be charged with its share of the expense. In this respect this section differs from G. C. §§ 5697 and 5698, where no provision is made for charging the state with any part of such expense: *State, ex rel., v. Cappeller*, 39 O. S. 207.

The commissioners under their power to employ an attorney, may employ the prosecuting attorney under this section: *State v. Stafford*, 11 O. D. (N. P.) 720.

County Solicitor to attend to such suits.

SEC. 5701. In each county in which there is a county solicitor, or a board of control having a solicitor, the county solicitor and the solicitor of such board shall take charge of and attend to all actions against any county officer in such county for performing, or attempting to perform, any of the duties authorized by law. Such officers shall not employ any other counsel to defend such action or suit. (R. S. Sec. 2862.)

Abstract of duplicate, etc., transmitted to auditor of state.

SEC. 5702. The county auditor, on or before the first day of October, annually, shall make and transmit by mail, to the auditor of state, a complete abstract of the duplicate of his county. Such abstract shall state the aggregate value of the taxable property, and the total amount of taxes for all purposes assessed thereon for the year. (R. S. Sec. 2863.)

Abstract of personal property.

SEC. 5703. At the time provided in the next preceding section, the county auditor shall also make and transmit to the auditor of state, an abstract of the number and value of each of the enumerated articles, the value of merchants' and manufacturers' stocks, and the value of all other personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and the value of all other articles of personal property, as returned by the township assessors, or as fixed by the county board of equalization. Such abstracts shall be made out in the form, and the statement shall contain such details as the auditor of state prescribes. (R. S. Sec. 2863.)

Cited: State, ex rel., v. Madigan, 8 O. C. C. (N. S.) 553, 18 O. C. D. 673.

COLLECTION OF TAXES. (Continued.)

CIGARETTES.

INTOXICATING LIQUORS.

SECTION

TAX FOR MAINTENANCE OF PUBLIC
UTILITIES COMMISSION.

TAX FOR MAINTENANCE OF STATE
FIRE MARSHAL'S DEPARTMENT.

841. Annual tax on insurance companies.

(174)

Refunding orders drawn under section 5896, G. C., should be drawn against the general county fund and such fund should be reimbursed by charging the amount of the refund against the undivided proceeds of collections of cigarette assessments in the treasury to the credit of the state and county and the city, village or township to which the original assessment, on account of which the refund was made, was distributed and in the same proportion as such original distribution was made under the statute, and if there are not sufficient of such proceeds of assessments, to the credit of any such beneficiaries, the amount chargeable against it should be deducted from the undivided tax distribution due it at the next settlement. A. G. R. 1915, p. 1270.

INTOXICATING LIQUORS.

Meaning of phrase "trafficking in intoxicating liquors."

SEC. 6065. The phrase "trafficking in intoxicating liquor," as used in this chapter and in the penal statutes of this state, means the buying or procuring and selling of intoxicating liquor otherwise than upon a prescription issued in good faith by a reputable physician in active practice, or for exclusively known mechanical, pharmaceutical or sacramental purposes. Such phrase does not include the manufacture of intoxicating liquors from the raw material, and the sale thereof by the manufacturer thereof in quantities of one gallon or more at one time at the manufactory or the sale thereof in said quantities from the wagon or other vehicle of the manufacturer to the holder of a liquor license or in said quantities to individual consumers where said liquors are delivered to the homes of said individual consumers in territory wherein the sale of intoxicating liquors is not prohibited by law. (103 v. 241. R. S. Sec. 5364-16.)

Annual assessment on liquor business.

SEC. 6071. "Upon the business of trafficking in spirituous, vinous, malt or other intoxicating liquors, there shall be assessed yearly and paid into the county treasury, as provided by sections 6072, and following, of the General Code, by each person, corporation, or co-partnership engaged therein the sum of one thousand dollars." (R. S. Sec. 4364-9.)

The word "assessed" in similar statutes means "charged": Markle v. Newton, 64 O. S. 493.

The provision for refunding a part of a tax if the liquor dealer goes out of business is not rendered impossible of execution merely because it does not provide out of what fund such payment shall be made: Van Wert v. Brown, 47 O. S. 477.

This section is an exercise of the police power; and the delivery of an unbroken package by the agent of the manufacturer does not avoid the provisions of this and the following sections, although such delivery is the last step in interstate commerce: Stevens v. State, 61 O. S. 597.

This section includes the business of trafficking in malt liquor whether intoxicating or not: State v. Walder, 83 O. S. 68.

If one in dry territory orders liquor from outside of such territory to be sent by express C. O. D., the sale is complete upon delivery to the express company, and such sale is not made in dry territory: Mullen v. State, 10 O. C. C. (N. S.) 417, 20 O. C. D. 251 [affirmed, State v. Mullen, 78 O. S. 358.]

It a sale is made by correspondence and under the terms of the contract the person to whom the intoxicating liquor is sent has the option to accept it or not, and to pay price agreed upon only if he approves the goods and concludes to purchase them, but otherwise he is to return them at the expense of the sender, such approval and conclusion to purchase are necessary to complete the sale, and such sale is accordingly made in dry territory if the purchaser resides therein: Hayner v. State, 83 O. S. 178.

The fact that money paid as a tax for the privilege of selling intoxicating liquor is paid under protest and to avoid distraint does not relieve the county treasurer from the duty of paying the proper proportion thereof over to the city treasurer: Ratterman v. State, 44 O. S. 641.

The present statutes imposing a tax upon the sale of intoxicating liquor, and statutes similar thereto, have been held to be valid and constitutional. Such tax is not a license, but is a means of providing against the evils arising from the liquor traffic: Adler v. Whitbeck, 44 O. S. 539; Anderson v. Brewster, 44 O. S. 576.

The sale of intoxicating liquor is subject to taxation, even though such business is conducted in violation of a valid ordinance: Conwell v. Sears, 65 O. S. 49.

Since the statute imposes a tax upon the business of trafficking in malt liquor, such tax is to be imposed whether the liquor thus sold is intoxicating or not: LaFollette v. Murray, 81 O. S. 474.

See to the same effect under an earlier analogous statute State v. Kauffman, 68 O. S. 635.

The sale of malt liquor, whether intoxicating or not, is forbidden by the county local option law (G. C. § 6108, et seq.): State v. Walder, 83 O. S. 68.

The sale of twenty-five bottles of beer not for medical purposes was held to be a sale at retail within the meaning of the Dow law: Kaufmann v. Hillsboro, 45 O. S. 700.

The provision excepting a manufacturer from taxation for sales of liquor made from the manufactory in quantities of one gallon or more at one time, does not except a manufacturer from the operation of the county local option law (G. C. § 6108, et seq.), and he is criminally liable for selling in dry territory, even if the sale is made from the manufactory in quantities exceeding a gallon at a time: Scheu v. State, 83 O. S. 146.

A tax for the sale of intoxicating liquor may be imposed upon a wholesale dealer as well as upon the retail dealer, in the absence of specific statutory provision: Senior v. Ratterman, 44 O. S. 661.

If intoxicating liquor is stored by the manufacturer at a place different from the manufactory, and it is sold from such place, the manufacturer is engaged in trafficking in intoxicating liquors, and is liable for the tax: *Brewing Co. v. Talbot*, 59 O. S. 511; *Brewing Co. v. Beck*, 10 O. C. C. (N. S.) 361, 20 O. C. D. 266; *Walsh & Co. v. Lewis*, 5 O. N. P. 392; *Brewing Co. v. Bristol*, 179 U. S. 445, 92 Fed. 28, 12 O. F. D. 371.

The fact that a part of a stock of intoxicating liquor is stored in another building does not make the owner thereof liable to pay a second tax if he makes no sales therefrom: *Hanson v. Luce*, 50 O. S. 440.

By force of our tax laws, the assessments upon the business of trafficking in intoxicating liquors which it is the duty of the county auditor to place upon the tax duplicate, as well as those for previous years which may have been omitted as those for the current year, become a lien upon the property in and on which such traffic has been conducted, superior to that of a mortgage given and duly entered of record prior to the entry of such tax on the duplicate and prior to the beginning of such traffic on the premises: *Trust Co. v. Stich*, 71 O. S. 459.

Priority of lien is not affected by the fact that at the date of a mortgage thereon no sale of liquor was ever known to have taken place on the premises; that the premises were not adapted to the traffic; that the mortgagee had no knowledge at any time of any sale of liquor thereon, or of any intention to sell on the part of any one, and that he loaned his money in good faith and had no reason to suspect or fear that any sales of liquor would ever be made on the mortgaged premises: *Trust Co. v. Stich*, 71 O. S. 469; see, to the same effect, *Baldwin & Co. v. Pelton*, 1 *Hosea*, 68, 19 O. D. (N. P.) 546.

For unlawful sale of intoxicating liquor, see G. C. § 13195.

For making false answer in statement to assessor, see G. C. § 13219 and also § 13221.

An Ohio agent for a distilling company of another state, whose activities are confined to solicitation, receiving and forwarding orders to such distilling company or its other representatives and collecting from Ohio purchasers on such orders, is not liable to taxation under the provisions of section 6071, G. C.

A foreign distilling company which ships into Ohio and there keeps at a railroad warehouse or other place a stock of intoxicating liquors from which sales and deliveries by it or its agents are thereafter made, is liable to taxation under section 6071, G. C. A. G. R. 1915, p. 364.

Provision for refunder of portion of tax on traffic in intoxicating liquors.

SEC. 6071-1. When a person, association, partnership or corporation engaged in the traffic of intoxicating liquors is required by the order of the military or other authority of the United States or of the state, county, municipality or township or by or through fire, flood, earthquake or other public calamity to discontinue business temporarily, said person, association, partnership or corporation shall be entitled to a refunder of a proportionate amount of the tax so paid under section 6071 and following of the General Code, based upon the number of days or fraction thereof, of enforced discontinuance. A person, association, partnership or corporation so affected upon written application to the common pleas court of the county shall be entitled to an immediate hearing by said court. The clerk of said court shall notify the county auditor and county prosecutor of the application and the time set for hearing, and the said officer shall represent the county at said hearing. The court shall thereupon make a finding as to the fact and the number of days of said enforced discontinuance and shall make an order for a refunder accordingly which order shall not be subjected to review. If the discontinuance is upon the order of any state or federal authority for whatever reason said order is made then the auditor of state shall draw a warrant upon the treasurer of state in favor of any such person, association, partnership or corporation for the amount of such refunder found by the court, to be paid out of any sum appropriated by the general assembly therefor; and if the discontinuance is upon the order of any county, municipality or township authority or is the result of fire, flood, earthquake or other public calamity, then the auditor of the county shall draw a warrant upon the treasurer of the county in favor of any such person, association, partnership or corporation for the amount of such refunder found by the court, to be paid out of any surplus or unexpended funds in the hands of said treasurer.

The act shall apply to any such discontinuance of business in the assessment year beginning the fourth Monday of May, 1912, and thereafter. (103 v. 818.)

Assessment lien when; Time of payment; When such assessment not a lien; When and how rebate or refunder may be obtained.

SEC. 6072. Such assessment, with any penalty thereon, shall attach and operate as a lien upon the real property on and in which such business is conducted, as of the fourth Monday of May of each year, and shall be paid at the times provided for the payment of taxes on real or personal property within this state, to-wit: one-half on or before the twentieth day of June, and one-half on or before the twentieth day of December of each year; provided, however, that such assessment, with any penalty thereon shall not attach and operate as a lien upon the real property aforesaid, if the business taxed and for which the assessment is paid, is conducted by a person, corporation or co-partnership without the knowledge or assent of the owner of said real property. Any person who traffics in intoxicating liquors as a beverage at retail shall not be entitled to any rebate or refunder under the liquor tax law without giving a bond in amount equal to twice the amount of such rebate or refunder, with securities acceptable to the county clerk that he will not traffic

in intoxicating liquors without paying the liquor taxes provided by law; such bond shall be filed with the county auditor and certified to the state liquor licensing board. (104 v. 166.)

This section is valid and constitutional. It is in exercise of the taxing power and of the police power, and it is not a license: *Adler v. Whitbeck*, 44 O. S. 539; *Anderson v. Brewster*, 44 O. S. 576; *Brewing Co. v. Bristol*, 179 U. S. 545, 15 O. F. D. 846 [same case below, *Brewing Co. v. Bristol*, 92 Fed. 28, 12 O. F. D. 371].

The tax upon the liquor traffic is superior to other liens: *Baldwin v. Pelton*, 1 *Hosea*, 68, 19 O. D. (N. P.) 546.

The tax is prior to a previously recorded mortgage: *Loan Co. v. Hanson*, 5 O. N. P. 162 [affirmed, without report, *Loan Co. v. Hanson*, 63 O. S. 590].

The lien of a liquor tax is not superior to the lien of a bona fide chattel mortgage on household goods: *Heskett v. Reese*, 21 O. D. (N. P.) 254.

The authority of the county auditor to enter upon the duplicate omitted taxes upon the business of trafficking in intoxicating liquors is not restricted to the current year; and in the absence of specific statutory authority to the contrary, taxes omitted in previous years may be entered upon the duplicate of the current year and collected as other taxes: *Markle v. Newton*, 64 O. S. 493.

The lien attaches to property which was leased whether by oral or written lease subsequent to the passage of the act imposing such lien: *Anderson v. Brewster*, 44 O. S. 576.

Tax for part of year.

SEC. 6073. When such business is commenced after the fourth Monday in May in any year, such assessment shall be proportionate in amount to the remainder of the assessment year, except that it shall not be less than two hundred dollars, and such assessment shall attach and operate as a lien as provided in the next preceding section and be payable upon the date of such commencement. (98 v. 100 § 3.)

Penalties are assessed by way of punishment and cannot be refunded, and the minimum amount collectible in this case is the minimum tax, twenty per cent penalty of the entire assessment to the end of the year, plus four per cent collection fees and costs by distress and sale. The sheriff's fees in such case are included in the four per cent collection fees: *Leonard v. Bowland*, 4 O. N. P. (N. S.) 577, 17 O. D. (N. P.) 558.

Refunding orders.

SEC. 6074. When a person, company, corporation or co-partnership, engaged in such business, has been assessed and has paid the full amount of such assessment and afterward discontinues such business, the county auditor, upon being satisfied thereof, shall issue to such person, corporation or co-partnership a refunding order for a proportionate amount of such assessment so paid, but the amount of such assessment so retained shall not be less than two hundred dollars unless such discontinuance of business has been caused by an election under a local option law or a lawful finding of a mayor or judge on a petition filed in a residence district as provided in this chapter, in which case the proportionate amount of such tax shall be refunded in full. (85 v. 56 § 4; R. S. Sec. 4364-20d; 98 v. 74 § 9; 98 v. 100 § 3; 99 v. 37 § 4.)

This section is not impossible of execution on the ground that it does not provide out of what fund such return of a portion of the tax shall be made: *Van Wert v. Brown*, 47 O. S. 477.

One who has paid a tax for trafficking in intoxicating liquor and whose business is prohibited in the township in which he is located, is entitled to receive a refunding order for a proportionate amount of such tax: *State v. Rouch*, 47 O. S. 478.

An assignment of any amount that may be refunded which is made by the liquor dealer to secure the money advanced to pay the tax is a lien upon such fund in the hands of the treasurer upon discontinuance of the business: *Brewing Co. v. Shaffer*, 10 O. N. P. (N. S.) 145, 20 O. D. (N. P.) 320.

The penalty provided for failure to make a proper return as to the character of business carried on, and for carrying on business different from that specified in the return, cannot be refunded: *Simpson v. Serviss*, 3 O. C. C. 433, 2 O. C. D. 246.

Section 6074, General Code, providing a tax of \$1,000.00 upon the business of trafficking in intoxicating liquors, applies as well to dry as to wet territory.

Under Section 6089 such assessment in dry territory must carry with it a penalty of twenty per cent., and not until all of this has been paid in, can the auditor consider a refunding order.

The allowance of the refunding order is entirely at the discretion of the auditor, and he may take into consideration all surrounding facts and circumstances.

It is not for the court to restrain the treasurer from collecting such taxes nor has the court anything to do with the discretion of the county auditor in allowing a refunder. *A. G. R.* 1911-1912, p. 150.

Railway companies operating buffet cars.

SEC. 6075. A railway corporation which maintains or conducts dining or buffet cars upon a train in which spirituous, vinous, malt or other intoxicating liquor is dispensed within this state or permits them to be maintained or conducted, shall be assessed

annually by the auditor of state and pay into the state treasury on or before the tenth day of June, the sum of one thousand dollars if such railway corporation maintains, operates or control not to exceed two hundred miles of railway within this state, and the sum of fifteen hundred dollars, if it maintains, operates or controls over two hundred miles of railway within this state. (98 v. 100 § 3a.)

Penalty.

SEC. 6076. If such railway company neglect or refuse to pay such assessment when due, it shall be liable for such assessment, with a penalty of fifty per cent in addition thereto to be recovered in an action brought in the name of the state of Ohio by the attorney-general in any court of record in any county of this state in which a line of such railway corporation runs. (98 v. 100 § 3a.)

Collection of tax in case of non-payment.

SEC. 6077. If a person, corporation or co-partnership refuses or neglects to pay the amount due under the provisions of this chapter within the time therein specified, the county treasurer shall forthwith collect such amount with the penalties thereon, and four per cent collection fees and costs, by distress and sale, as on execution, from any goods and chattels of such person, corporation or co-partnership. (83 v. 158 § 4.)

Taxes omitted in previous years may be entered upon the duplicate for the current year and collected as other taxes: *Markle v. Newton*, 64 O. S. 493.

Household goods, such as beds, chairs, carpets, etc., are not such goods and chattels as are used in the business of trafficking in intoxicating liquors, and as against a mortgagee in good faith cannot be distrained for nonpayment of the liquor tax: *King v. Richardson*, 9 O. N. P. (N. S.) 209, 19 O. D. (N. P.) 578.

A boat belonging to a nonresident of the state and used by another in the liquor business, without the consent of such owner, cannot be distrained for payment of the tax levied upon the trafficking in intoxicating liquors: *Haas v. Remick*, 13 O. C. C. (N. S.) 1, 21 O. C. D. 591; *Haas v. Remick*, 13 O. C. C. (N. S.) 395, 22 O. C. D. 89.

The fact that no demand was made at the seller's place of business for the payment of a tax for intoxicating liquors is immaterial if the parties and the goods which are levied on are before the court for the determination of the issues involved: *Leonard v. Bowland*, 4 O. N. P. (N. S.) 577, 17 O. D. (N. P.) 558.

Levy on goods and chattels.

SEC. 6078. The county treasurer shall forthwith call at the place of business of such person, corporation or co-partnership, and, in case of the refusal to pay such amount so due, shall levy on the goods and chattels of such person, corporation or co-partnership, wherever found in such county, or on the bar, fixtures, furniture, liquors, leasehold and other goods and chattels used in carrying on such business. Such levy shall take precedence of all liens, mortgages, conveyances or incumbrances hereafter taken or had on such goods and chattels so used in carrying on such business; and no claim of property by a third person to such goods and chattels so used in carrying on such business shall avail against such levy by the treasurer. No property, of any kind, of any person, corporation or co-partnership liable to pay such amount, penalty, interest and costs shall be exempt from such levy. (83 v. 158 § 4.)

The provision making possession of property conclusive evidence of ownership is not unconstitutional: *Baldwin v. Pelton*, 1 *Hosea*, 68, 19 O. D. (N. P.) 546.

Sale.

SEC. 6079. The county treasurer shall give like notice of the time and sale of the personal property to be sold under this chapter as in case of the sale of personal property on execution. All provisions of law applicable to sales of personal property on execution shall be applicable to sales under this chapter, except as herein otherwise provided; and all moneys collected by such treasurer under this chapter, after deducting his fees and costs, shall be paid into the county treasury. (83 v. 158 § 4.)

A county treasurer who, under provision of section 6079 General Code levies upon and sells spirituous liquors in satisfaction of the tax provided for in section 6071, is not such a dealer in intoxicating liquors that he, himself, should be thereby subjected to the statutory provisions against illegal sale, or to the provisions for a tax upon the liquor traffic. *A. G. R. 1912*, p. 1090.

Tax collected from real estate.

SEC. 6080. If the county treasurer under the levy heretofore provided is unable to collect the amount due thereunder or any part thereof, the county auditor shall place the amount due and unpaid on the tax duplicate against the real estate in which such traffic is carried on, and it shall be collected as other taxes and assessments on such premises. (*R. S. Sec. 4364-12*; 83 v. 158, § 4.)

The lien for the assessment attaches to the real property on which the business is conducted: *Moser v. Stebel*, 9 O. C. C. (N.S.) 217, 19 O. C. D. 487.

The lien of the state for this tax takes precedence over other liens, including a purchase money mortgage: *Baldwin v. Pelton*, 1 Hosea, 68, 19 O. D. (N.P.) 546.

The tax upon the liquor traffic is superior to other liens: *Baldwin v. Pelton*, 1 Hosea, 68, 19 O. D. (N.P.) 546.

The tax is prior to a previously recorded mortgage: *Loan Co. v. Hanson*, 5 O. N. P. 162 affirmed, without report, *Loan Co. v. Hanson*, 63 O. S. 590j.

The prosecuting attorney or treasurer is not authorized to compromise or settle for reduced amounts, claims for taxes due under section 6080, General Code, for traffic in intoxicating liquors. A. G. R. 1911-1912, p. 1013.

Powers and duties of inspectors.

SEC. 6087. The inspectors appointed by the state liquor licensing board, in addition to any other duties, by personal visitation or otherwise, shall make investigations to secure the names of all persons, firms or corporations liable to such assessment or increased assessment, whose names are not already on the duplicate, and report such names to the state liquor licensing board. In the performance of the duties imposed by this section on the inspectors appointed by the state liquor licensing board, said inspectors may summon and compel the attendance of witnesses before them to testify in relation to any matter which by law is a subject of inquiry and investigation and require the production of any book, paper or document which they deem pertinent. They shall have authority to administer an oath to any person appearing as a witness before them. They may at all reasonable hours enter into all buildings and upon all premises within their jurisdiction for the purpose of examination. (104 v. 166; R. S. Sec. 4364-12.)

Duty of licensing board.

SEC. 6088. The state liquor licensing board, upon the report and information submitted to it shall determine and forthwith certify to the auditor of state, the names of all persons, firms or corporations liable to such assessment or increased assessment, whose names are not already on the duplicate, together with a description of the real estate upon which said business is carried on. The state board shall keep a record of all such cases so certified by it to the auditor of state. (103 v. 442.)

Duty of auditor of state.

SEC. 6089. Thereupon the auditor of state shall cause all of such names to be entered upon the assessment duplicate of the proper county by the auditor thereof, together with a penalty of twenty per cent. thereon, which shall be collected in like manner as other assessments. Upon the request of the state liquor licensing board, the auditor of state and county treasurer shall forthwith make a report to it of their action upon all cases certified by it to the auditor of state until the tax and penalty thereon are paid into the county treasury. (103 v. 442.)

Correction of errors and remitting assessment.

SEC. 6091. The auditor of state, with the consent and approval of the state liquor licensing board, may correct any errors or remit any such assessment or increased assessment, together with the penalty thereon, if it is found to have been erroneously or illegally certified. (103 v. 442; R. S. Sec. 4364-14a.)

Collection by treasurer; proof of payment of U. S. tax.

SEC. 6092. The county treasurer shall collect and receipt for all assessments returned to him, and, if an assessment is not paid when due, he shall forthwith proceed, as provided in this chapter, to collect it. If he fails to satisfy such assessment from the goods and chattels therein described, he shall forthwith proceed as provided by law for the collection of unpaid taxes or assessments levied against lands, lots, or parcels thereof, to enforce the lien for such assessment with the penalty thereon. The provisions of law relating to such unpaid taxes or assessments levied against lands, lots or parcels thereof, and all other provisions of law relating to the assessment and collection of taxes are hereby made applicable to the enforcement of such liens and penalties. The county treasurer shall charge himself with all such assessments placed in his hands for collection, and shall account for them to the auditor, with all penalties collected thereunder. The fact, that the person, firm or corporation, against whom suit may be brought to enforce the collection of such assessment, has paid the special tax required by the laws of the United States for engaging in the sale of intoxicating liquor, as shown by the public records in the offices of the internal revenue department, may be offered in evidence as proof that he so engaged for the time for which such special tax was paid, and shall be prima facie evidence that such person, firm or corporation is actually engaged in the business of trafficking in intoxicating liquors as defined in this chapter. Nothing in this act shall be construed

to apply to a regular druggist selling intoxicating liquors upon prescription, issued in good faith by a reputable physician, in active practice, or for exclusively known mechanical, pharmaceutical or sacramental purposes. (R. S. Sec. 4364-15.)

Taxes which are omitted in previous years may be entered upon the duplicate of the current year and collected as other taxes: *Markle v. Newton*, 64 O. S. 493.

The possession of the certificate of the internal revenue collector showing that the United States tax has been paid is *prima facie* evidence to prove that the person having such certificate is trafficking in intoxicating liquors: *DeMonte v. Pabst*, 14 O. D. (N. P.) 97.

Assessment for maintenance of public utilities commission; certificate of assessment to auditor of state; collection.

SEC. 606. For the purpose of maintaining the department of the public service commission of Ohio, and the exercise of police supervision of railroads and public utilities of the state by it, a sum not exceeding seventy-five thousand dollars each year shall be apportioned among and assessed upon the railroads and public utilities within the state, by the commission, in proportion to the intra-state gross earnings or receipts of such railroads and public utilities for the year next preceding that in which the assessments are made.

On or before the first day of August next following, the commission shall certify to the auditor of state the amount of such assessment apportioned by it to each railroad and public utility and he shall certify such amount to the treasurer of state, who shall collect and pay the same into the state treasury to the credit of a special fund for the maintenance of the department of such public service commission. (R. S. Sec. 250-2; 91 v. 155, Sec. 2; 102 v. 549.)

Tax for maintaining state fire marshal's department.

SEC. 841. For the purpose of maintaining the department of state fire marshal and the payment of the expenses incident thereto, each fire insurance company doing business in this state shall pay to the superintendent of insurance in the month of November each year, in addition to the taxes required by law to be paid by it, one-half of one per cent. on the gross premium receipts of such companies on all business transacted by it in Ohio during the year next preceding, as shown by its annual statement under oath to the insurance department. The superintendent of insurance shall pay the money so received into the state treasury to the credit of a special fund for the maintenance of the office of state fire marshal. If any portion of such special fund remains unexpended at the end of the year, for which it was required to be paid, and the state fire marshal so certifies, it shall be transferred to the general revenue fund of the state. (R. S. Sec. 409-56.)

Foreign fire insurance companies doing solely a reinsurance business covering risks in this state are not liable for the fire marshal tax, unless the contract of reinsurance is entered into in Ohio, which is a question of fact to be determined by the particular company and the superintendent of insurance. *A. G. R.* 1915, p. 806.

CHAPTER THIRTY-NINE.

COLLECTION OF TAXES. (Continued.)

PENALTIES.

SECTION

5678. Non-payment real estate tax.
5679. Same.
2608. Same.
5694. Duplicate of unpaid personal property taxes to be made; ten per cent. penalty added.

SECTION

5695. Collection of taxes and penalties.
2656. Treasurer's compensation, 5 per cent. penalty.
5696. Reading delinquent list; employment of collectors.

Penalty on non-payment of real estate tax.

SEC. 5678. If one-half the taxes charged against an entry of real estate is not paid on or before the twentieth day of December, in that year, or collected by distress or otherwise prior to the February settlement, a penalty of fifteen per cent. thereon shall be added to such half of said taxes on the duplicate. If such taxes and penalty, including the remaining half thereof, are not paid on or before the twentieth of June next thereafter, or collected by distress or otherwise prior to the next August settlement, a like penalty shall be charged on the last half of such taxes. The total of such amounts shall constitute the delinquent taxes on such real estate to be collected in the manner prescribed by law. (R. S. Sec. 2844.)

Under the provisions of section 5678, General Code, a penalty of 15 per cent. may be charged for failure to pay the second half of the year's taxes, although the first half has been duly paid. A. G. R. 1914, p. 703.

General Code § 2608 and this section when construed together authorize the imposition of the penalty of fifteen per centum for the first default in the payment of taxes upon real property; and they do not permit the assessment of a penalty on the same taxes, or a penalty thereon in any succeeding year or years, by reason of the continued nonpayment of such taxes and penalty: *White v. Woodward*, 44 O. S. 347; *Hunter v. Borck*, 51 O. S. 320.

Property which is not exempt from taxation which has escaped taxation for a number of years because it is claimed to be exempt, is liable for such back tax and the penalties provided in this section: *Watterson v. Halliday*, 2 O. N. F. (N. S.) 693, 15 O. D. (N. F.) 271.

Same.

SEC. 5679. If the total amount of delinquent taxes and penalty as provided in the next preceding section, together with one-half of the taxes charged against such real estate for the current year, is not paid on or before the twentieth day of December, of the same year, the delinquent taxes and penalty, and the whole of the taxes of the current year, shall be due, and be collected by the sale of the real estate, in the manner authorized by law. If the first half of the taxes charged upon any real estate is paid on or before the twentieth day of December, as provided by law, but the remaining half thereof is not paid on or before the twentieth day of June next thereafter, or collected by distress or otherwise, prior to the next August settlement, as provided by law, a like penalty shall be added to such unpaid taxes, and they shall be treated as delinquent taxes, and, with the taxes of the current year, collected by the sale of such real estate, as aforesaid. (R. S. Sec. 2844.)

SEC. 2608. This section when construed together with sections 5678 and 5679, authorize the imposition of a penalty of 15 per cent. for the non-payment of taxes assessed and levied on a tract or lot of land for the first default in payment thereof. *White v. Woodward*, 44 O. S., 347.

Duplicate of unpaid personal property tax to be made.

SEC. 5694. Immediately after each semi-annual settlement in August, the county auditor shall make a tax list, and duplicate thereof, of all the taxes on personal property remaining unpaid, as shown by the treasurer's books, and the delinquent record as returned by him to the auditor. Such tax list and duplicate shall contain the name, valuation, and amount of personal property taxes, with ten per cent. penalty thereon, due and unpaid. He shall deliver the duplicate to the treasurer on the fifteenth day of September, annually. (R. S. Sec. 2855.)

The penalty cannot be imposed unless the duplicate shows the entry made by the auditor which is herein provided for: *Lee v. Sturges*, 46 O. S. 153.

If part of the taxes are valid and part are invalid, and the taxpayer is not given an opportunity to pay the valid part without also paying the invalid, the ten per cent penalty cannot be imposed: *Railway v. Stewart*, 13 O. C. C. 359, 7 O. C. D. 193.

In making up annually the delinquent tax duplicate required by this section, the county auditor is required to enter on such duplicate only the taxes on personal property remaining unpaid, as shown by the treasurer's books and the delinquent record as returned by him to the auditor at the time of his next preceding semi-annual settlement in August: *State, ex rel., v. Smith*, 71 O. S. 13.

This section does not apply where one voluntarily reports back taxes as due and owing from himself: *Topliff v. Shields*, 1 O. D. (N.P.) 551.

The duplicate herein provided for cannot be delivered to the treasurer for collection before the fifteenth day of September: *Van Nest v. Brooks*, 11 Dec. Rep. 228, 25 Bull. 307.

Collection of taxes and penalties.

SEC. 5695. The county treasurer shall forthwith collect the taxes and penalty on the duplicate by any of the means provided by law, and the funds so collected shall be distributed in proper proportions to the appropriate funds.

The duplicate of the taxes which is delivered to the treasurer is his warrant of authority for collecting the various levies found against the entry thereon, together with the interest and the penalty which may accrue; or may have accrued: *Hoglen v. Cohan*, 30 O. S. 436.

If the delinquent taxes are voluntarily paid before June 20th and December 20th, the five per cent penalty is not allowed to the treasurer: *Topliff v. Shields*, 1 O. D. (N.P.) 551 [affirmed, without report, in *Shields v. Topliff*, 54 O. S. 683].

See, also, G. C. § 2656.

The county treasurer, in the collection of the tax charged upon his duplicate, acts as a ministerial officer, and is protected by his duplicate, in an action of trespass, for acts done in its collection, under the same circumstances which would enable a ministerial officer to justify by virtue of process: *Bank v. Smith*, 7 O. S. 42; see, to the same effect, *Loomis v. Spencer*, 1 O. S. 153; *Thompson v. Kelly*, 2 O. S. 647.

The rule that statutes of limitation do not run against the state unless it is expressly so provided, is applicable in actions where the state, though not a party to the record, is the real party in interest: *Wasteney v. Schott*, 58 O. S. 410 [affirming *Schott v. Wasteney*, 13 O. C. C. 339, 7 O. C. D. 222].

SEC. 2656. See this section for the 5 per cent. payable to county treasurers as compensation for collecting delinquent personal property taxes.

Reading of list of delinquents; employment of collectors.

SEC. 5696. The county commissioners, at each September session, shall cause the list of persons delinquent in the payment on personal property to be publicly read. If they deem it necessary, they may authorize the treasurer to employ collectors to collect such taxes or part thereof, prescribing the compensation of such collectors which shall be paid out of the county treasury. All such allowances shall be apportioned ratably by the county auditor among all the funds entitled to share in the distribution of such taxes. (R. S. Sec. 2858.)

County commissioners have no jurisdiction to authorize a county treasurer to employ a collector to collect personal delinquent taxes under this section, until they first cause the delinquent list to be publicly read as provided in this section. An appointment of such collector can be authorized only for the collection of the whole or any part of the delinquent list which has been caused to be so publicly read: *Commissioners v. Arnold*, 65 O. S. 479.

There is no authority under this section to employ a collector to collect future delinquent lists: *Commissioners v. Arnold*, 65 O. S. 479.

Under this section, the county commissioners must prescribe the compensation of the tax collector definitely before collections are made. It is not sufficient to prescribe that the compensation shall not exceed a certain amount or a certain percentum: *Commissioners v. Arnold*, 65 O. S. 479.

Under this section the county treasurer may appoint as many collectors as he may see fit. Such appointment is made by the treasurer, and not by the commissioners; and the authority of the collector ceases with the expiration of the term of the treasurer: *Brady v. French*, 6 O. N. P. 122, 9 O. D. (N.P.) 195.

CHAPTER FORTY.

COLLECTION OF TAXES. (Continued.)

REMEDIES.

SECTION

12075. Jurisdiction of common pleas and superior courts.

12076. Parties to actions to enjoin levy.

12077. Parties to actions to enjoin collection.

SECTION

12078. Amount admitted must be paid or tendered and bond given.

12078-1. Refunding illegal tax or assessment.

See G. C. 5624-10 and 5624-11, (106 v. 269, §§ 90 and 91), for powers of the tax commission to remit taxes and penalties illegally assessed.

Jurisdiction of courts of common pleas and superior.

SEC. 12075. Common pleas and superior courts may enjoin the illegal levy or collection of taxes and assessments, and entertain actions to recover them back when collected, without regard to the amount thereof, but no recovery shall be had unless the action be brought within one year after the taxes or assessments are collected. (R. S. Sec. 5848.)

An additional or enlarged remedy is given to the taxpayer under this statute. While the action under it is still equitable in its nature, a remedy is afforded by it which formerly might be had only at law: *Tone v. Columbus*, 39 O. S. 281; *Stephan v. Daniels*, 27 O. S. 527; *Steesse v. Oviatt*, 24 O. S. 248.

To provide a proper remedy was the object of this law. It was a legislative recognition of a fundamental duty enjoined by the constitution of the state, that while the power to tax was essential to government, the duty of protecting the citizen from illegal exactions under the name of taxes, and under the forms of law, was not to be forgotten or neglected.

It being therefore, remedial in its character, it should receive that construction, if the words will reasonably admit, that will effect the manifest intention of the legislature, and remedy the evil.

It gives a remedy by injunction, on the application of a single person taxed, when none existed before. In his application he need not aver and show, as under ordinary rules in equity, that great or irreparable injury is about to be done for which he has no adequate remedy at law, but only that the tax is illegal which is about to be assessed or collected.

It thus becomes apparent that a new equitable remedy was given by this statute." *Stephen, Treas., v. Daniels*, 27 O. S. 535.

This section and not G. C. § 12241 provides the method for testing the validity of a tax or assessment: *Musser v. Adair*, 55 O. S. 466; *Stemen v. Hizey*, 19 O. D. (N.P.) 155.

This section is not revoked by the passage of the Willis law (G. C. §§ 5522 and 5524), and if a taxpayer may invoke the aid of the courts to determine the legality of the action of the board of appraisers, the state may likewise invoke the same aid for the same purpose: *State v. Bridge Co.*, 18 O. D. (N.P.) 273.

This section applies to an action to recover back the excessive part of a street assessment: *Groesbeck v. Cincinnati*, 51 O. S. 365.

Both under G. C. § 12075 and upon general principles, aside from such statute, a federal court in Ohio may entertain a suit to enjoin the enforcement of a special assessment made under a rule or system in violation of the constitution of the United States: *Norwood v. Baker*, 172 U. S. 269.

Where a statute of a state creates a new right or provides a new remedy, the federal courts will enforce that right either on the common law or equity side of the docket, as the nature of the right or remedy requires: *Cummings v. Bank*, 101 U. S. 153.

The rights conferred by this statute will be enforced by the federal courts: *Bank v. Hubbard*, 106 Fed. 809, 45 C. C. A. 66, 13 O. F. D. 508.

It will be enforced by the federal courts acting as courts of equity: *Norwood v. Baker*, 172 U. S. 269; *Bank v. Dodge*, 197 U. S. 70; *Lander v. Bank*, 118 Fed. 785, 55 C. C. A. 523, 14 O. F. D. 54.

A tax can not be justified merely upon equitable considerations. Public burdens of that nature can be sustained only when authorized by positive law. And when such burden is illegally imposed, it is a statutory right of the party against whom it is charged to stay its collection by injunction: *Markle v. Newton*, 64 O. S. 493.

Injunction will not lie where errors and irregularities could have been remedied by a petition in error, as in the case of county commissioners' proceedings in two-mile pike cases, if the error appeared in the record: *Lewis v. Laylin*, 46 O. S. 663.

Injunction will not lie where errors and irregularities may be reviewed by petition in error, and is not a proper procedure to correct errors in proceedings of township trustees: *Haff v. Fuller*, 45 O. S. 495.

Failure to give notice of assessment proceedings is ground for enjoining the collection of assessment levied without such notice: *Joyce v. Barron*, 67 O. S. 264.

An assessment for a county ditch, under a proceeding of which the landowner had neither notice nor knowledge, is illegal, and its collection may be perpetually enjoined: *Railway v. Wagner*, 43 O. S. 75.

Although a valuation made or added by taxing officers in good faith is conclusive in the absence of gross mistake, yet the liability to be taxed at all is not thus concluded, and G. C. § 12075, giving an injunction, protects the citizen the same as if an appeal were given: *Hagerty v. Huddleston*, 60 O. S. 149.

Courts of equity have full authority to review the decision of the auditor, where the foundation of the right to tax is challenged. The action of the auditor makes a prima facie case only: *Kraay v. Gibson*, 2 O. N. P. (N. S.) 537, [affirmed, *Gibson v. Kraay*, 17 O. D. (N. P.) 218, 3 O. L. R. 671].

A taxpayer has no right, after voluntary payment, to enjoin an unconstitutional road tax: *State ex rel., v. Commissioners*, 56 O. S. 718.

Where a person pays on an illegal increase of valuation the first half of the taxes without protest, and this amounts to more than the entire year's proper taxes, an injunction will be granted against any part of the last half, although he intended the payment made as the half taxes only: *Cozad v. Hubbard*, 13 O. C. C. 294, 10 O. C. D. 162.

Payment of an illegal tax by plaintiff after dissolution of an injunction will not prevent plaintiff from prosecuting error to test the validity of the tax when other taxes for later years are to be levied under the same law: *Railway v. Martin*, 53 O. S. 386.

Several lot owners may join to restrain an invalid street assessment, and, if numerous, one may sue on behalf of himself and all whom he is authorized to represent: *Upington v. Oviatt*, 24 O. S. 232; *Quinlan v. Myers*, 29 O. S. 500.

A taxpayer may bring action to enjoin collection of tax levied for payment of bonds issued under an unconstitutional act: *Counterman v. Dublin*, 38 O. S. 515.

The plaintiff seeking to enjoin the collection of an assessment must show the invalidity of the tax or assessment by proper averments and proof: *Bolton v. Cleveland*, 35 O. S. 319.

The plaintiff is not required to make out a case in every element which would be necessary without it to entitle him to equitable relief; it is sufficient if he shows that the tax or assessment is illegal: *Tone v. Columbus*, 39 O. S. 281; *Stephen v. Daniels*, 27 O. S. 527; *Steele v. Oviatt*, 24 O. S. 248.

The burden of establishing a right to a perpetual injunction against the collection of an assessment is upon the party who claims to be entitled to the injunction: *Spangler v. Cleveland*, 43 O. S. 526.

Voluntarily paid taxes without protest or objection are not recoverable. Taxes paid after December 20th, without effort by the treasurer to collect or enforce payment, but received in the usual course when offered, are voluntarily paid: *Wilson v. Pelton*, 40 O. S. 306.

Payments made under a mistake of facts without consideration are recoverable: *Woolley v. Staley*, 39 O. S. 354.

Payment of taxes under a belief justified by the circumstances that there is a legal charge on the property, when there is no such charge on the duplicate and no legal or moral obligation to pay, is recoverable as made under a mistake of facts: *Woolley v. Staley*, 39 O. S. 354.

Payments made under a mistake of law can not be recovered back: *McCarty v. Toledo*, 11 O. C. C. 67, 5 O. C. D. 88.

Voluntary payments of an assessment under a law subsequently declared unconstitutional can not be recovered back: *State, ex rel., v. Bader*, 56 O. S., 718.

Payments which are involuntary may be recovered back. To make the payment of an illegal demand involuntary, it must be made to appear that it was to release the person or property from detention or to prevent the seizure of either by the other party having apparent authority to do so without resorting to an action at law: *Mays v. Cincinnati*, 1 O. S. 268.

The ruling in *Mays v. Cincinnati*, 1 O. S. 268, was modified in *Baker v. Cincinnati*, 11 O. S. 534, where it was held that a payment may be involuntary, if there be an immediate and urgent necessity or the payment is made for the purpose of redeeming or preserving one's property.

The payment of a tax to avoid a penalty provided by statute, when made under protest with notification of an action to recover such tax, is not voluntary, and an action for recovery may be maintained if the tax is illegal: *Telegraph Co. v. Mayer*, 28 O. S. 521; *Ratterman v. Express Co.*, 49 O. S. 608.

To recover illegal taxes the payment must be involuntary, and, where the treasurer is about to levy, a simple protest and notice of intended suit is not sufficient: *Whitbeck v. Minch*, 48 O. S. 210; see *Marietta v. Slocomb*, 6 O. S. 471.

Payment of an illegal assessment under protest without waiting for it to be returned delinquent, and the land advertised for sale is not voluntary: *Higgins v. Pelton*, 7 Dec. Rep. 661, 4 Bull. 751.

An action to recover back an excess of assessment over cost of improvement must be brought within one year, though the illegality was not then known: *Groesbeck v. Cincinnati*, 51 O. S. 365.

An assessment for more than is necessary is illegal as to the excess, and hence the property owner who paid it can not recover back the excess after a year under this section, although the excess was caused by a mistake in calculation and the payment was in ignorance of it: *Groesbeck v. Cincinnati*, 51 O. S. 365.

When, for the purpose of collection, an assessment is divided into two or more installments, payable annually or otherwise, the limitation of time in which the action can be brought as provided in this section begins to run against such installments from the time of its collection and not from the collection of the last installment: *Pelton v. Bemis*, 44 O. S. 51.

One taxpayer can not sue on behalf of himself and others to recover back payments of an illegal tax, but each must sue for himself: *Trustees v. Thoman*, 51 O. S. 285.

Suit may be maintained under this section on the ground that complainant was not at the time of the levy of such tax a resident of the county, as to render credits taxable therein: *McKnight v. Dudley*, 148 Fed. 204, 78 C. C. A. 162, 15 O. F. D. 288.

The record of a board of equalization is not conclusive, but only prima facie evidence, in an action by a taxpayer under this section challenging the legality of a tax or assessment: *Hagerty v. Huddleston*, 60 O. S. 149.

One who has erroneously paid taxes may, after the year has elapsed for recovering the same by suit under this section, proceed in mandamus against the auditor when that official has discovered taxes to have been erroneously paid within five years, to call the attention of the county commissioners to the fact, so that they may order a refunder: *Hagerty v. State*, ex rel., 14 O. C. C. 95, 7 O. C. D. 88.

That the taxes have been voluntarily paid is no defense to the proceeding in mandamus: *Hagerty v. State*, ex rel., 14 O. C. C. 95, 7 O. C. D. 88.

Injunction lies against an arbitrary addition to a personal tax return without evidence. *Lumber Co. v. Robinson*, 1 App. 209.

Parties to actions to enjoin levy.

SEC. 12076. Actions to enjoin the illegal levy of taxes and assessments must be brought against the corporation or person for whose use and benefit the levy is made. If the levy would go upon the county duplicate, the county auditor must be joined in the action. (R. S. Sec. 5849.)

Parties to action to enjoin collection.

SEC. 12077. Actions to enjoin the collection of taxes and assessments must be brought against the officer whose duty it is to collect them. Actions to recover back taxes and assessments, must be brought against the officer who made the collection, or, if he be dead, against his personal representative. When they were not collected on the county duplicate, the corporation which made the levy must be joined in the action. (R. S. Sec. 5850.)

A suit against a county treasurer to enjoin an illegal tax is in its nature against the office rather than the person, and a change of incumbent does not abate it. The successor may be substituted: *Railway v. Martin*, 53 O. S. 386.

The action to recover back an assessment illegally collected by a county treasurer must be brought against such officer individually, and not in his official capacity: *Hornberger v. Case*, 9 Dec. Rep. 434, 13 Bull. 511; *Herzberg v. Willey*, 9 Dec. Rep. 426, 13 Bull. 334.

Amount admitted must be paid or tendered, and bond given.

SEC. 12078. If the plaintiff in an action to enjoin the collection of taxes or assessments admits that a part thereof was legally levied, he first must pay or tender the sum admitted to be due. When an injunction is allowed, bond must be given as in other cases. The injunction shall be a justification of the officers charged with the collection of such taxes or assessments for not collecting them. (R. S. Sec. 5851.)

If an injunction is asked against the collection of a tax on the ground that it is too large, an injunction will be granted only upon condition that the plaintiff pay a tax equal to that which might have been properly assessed: *Frazer v. Liebern*, 16 O. S. 614.

If the valid portion of an assessment can be ascertained, a court of equity will enjoin the collection of the illegal portion only upon the condition that the valid portion be paid: *Ehni v. Columbus*, 3 O. C. C. 494, 2 O. C. D. 283.

Refunding illegal tax assessments.

SEC. 12078-1. That if, by judgment or final order of any court of competent jurisdiction in this state, in an action not pending on appeal or error it has been or shall be adjudged and determined that any taxes or assessment or part thereof levied after January 1, 1910, was illegal and such judgment or order has not been made or shall not be made in time to prevent the collection or payment of such tax or assessments, then such tax or assessment or such part thereof as shall at the time of such judgment or order be then unexpended and in the possession of the officer collecting the same, shall be repaid and refunded to the person paying such tax or assessment by the officer having the same in his possession.

CHAPTER FORTY-ONE.

DELINQUENT LANDS.

SECTION

- 5704. Publication.
- 5705. Form of notice.
- 5706. Fees for publication of delinquent and forfeited land list.
- 5707. Auditor to compare delinquent list with duplicate.
- 5708. Copy inserted in delinquent list; certificate.
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- 5728. Same as to redemption of lands.
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- 5731. Auditor to transfer land sold for taxes.

Publication.

SEC. 5704. Each county auditor shall cause the list of delinquent lands in his county to be published weekly for two weeks between the twentieth day of December, and the second Tuesday in February next ensuing in one newspaper in the English language, printed and of general circulation in the county, and one newspaper of the German language if there is such newspaper printed, published and of general circulation therein. There shall be attached to the list a notice that the delinquent lands will be sold by the county treasurer, as provided by law. (R. S. Sec. 2864.)

This section and similar and analogous sections have been held to be mandatory, and a failure to comply therewith invalidates the proceedings thereafter and the tax sale based thereon: *Thompson's Lessee v. Gotham*, 9 O. 170; *Rhodes v. Gunn*, 35 O. S. 387.

Under a similar statute, the publication of a notice which omitted to state the county wherein the sale was to be made, but stated that such sale was to be "at the courthouse in Warren," was held to be sufficient: *Sheldon v. Coates*, 10 O. 278.

In a proceeding under a somewhat similar statute (G. C. § 3228, et seq.) to sell school lands for the unpaid purchase price, it was held that if a notice which was substantially sufficient was given, it was not rendered invalid by the fact that another and defective notice for the same sale on another day had been published in another paper: *Sealing v. Lawrence*, 27 O. S. 441.

Under a similar section due notice of sale could be proved by the production of a newspaper containing advertisement of the notice, accompanied by proof of the publication for the requisite length of time: *Thevenin v. Lessee of Slocum*, 16 O. 519.

A sale of land for taxes is not valid unless the record of the advertisement of the list of delinquents for four weeks, between the first of October and the first of December, be recorded in the auditor's office as the law requires: *Kellogg v. McLaughlin*, 8 O. 114.

Form of notice.

SEC. 5705. Such notice shall be in substance as follows:

DELINQUENT TAX SALE.

The lands, lots and parts of lots returned delinquent by the treasurer of..... county, with the taxes and penalty charged thereon, agreeably to law, are contained and described in the following list, viz: (here insert the list with the name or names of the owner or owners of the said respective tracts of land, or town lots, as designated on the duplicate.) And notice is hereby given that the whole of such several tracts, lots or parts of lots, or so much thereof as may be necessary to pay the taxes and penalty charged thereon, will be sold by the county treasurer at the court house in such county on the second Tuesday of February, ..., unless the taxes and penalty are paid before that

time, and that the sale will be continued from day to day, until the several tracts, lots and parts of lots, have been sold or offered for sale. (R. S. Sec. 2864.)

Sale not invalid if sufficiently described on duplicate, etc., see G. C. § 5725.

A sale of lands for taxes is not valid, unless such lands have been listed previously under some appropriate and pertinent description: *Hannel v. Smith*, 15 O. 134.

Fees for publication of delinquent and forfeited land list.

SEC. 5706. The publishers of newspapers, for advertising the delinquent and forfeited list of the several counties, and the notice of sale shall be entitled to receive a sum not exceeding the following rates: for the notice of sale, ten dollars; for designating the several school districts, townships, villages and cities, and the several wards in a city, fifty cents each; and for each tract of land, city or town lot, or part of lot, contained in each of such lists, thirty cents. A greater sum than one-half of the taxes and penalties, due on any tract, lot, or part of lot shall not be allowed for advertising such tract, lot, or part of lot. Such property shall not be published in a list, as delinquent, if the taxes and penalty thereon had been paid on or before the twentieth day of December. (R. S. Sec. 2865.)

The total amount that may be expended in advertising delinquent lands for sale, in order to collect the taxes due thereon, shall not exceed on any tract, lot or part of a lot more than one-half of the taxes and penalties thereon. *A. G. R. 1913, p. 311.*

Auditor to compare delinquent list with duplicate.

SEC. 5707. Before advertising such list of delinquent lands and lots, the county auditor shall compare it with the duplicate in the office of the county treasurer, and strike therefrom all lands or town lots upon which taxes, interest, and penalty of the preceding year, with the taxes of the current year, have been paid, and advertise the remainder as provided in this chapter. (R. S. Sec. 2866.)

Copy inserted in delinquent list; certificate.

SEC. 5708. The county auditor, on or before the day of sale mentioned in such notice, shall insert at the foot of the record, on the delinquent list, a copy of the notice, and certify on the record, immediately following such notice, the name of the paper, and the length of time such list and notice were published therein. (R. S. Sec. 2867.)

Failure to comply with the provisions of this section renders tax sales invalid: *Magruder v. Esmay*, 35 O. S. 221.

When delinquent list not published.

SEC. 5709. If a county auditor, by inadvertence or mistake, omits to publish the delinquent list of the county as required by law, he shall charge the lands and town lots with the taxes and penalty, if such taxes and penalty, with which the lands and town lots therein stand charged have not been paid before the tenth day of August of the next succeeding year. He shall also charge them with the taxes of the current year, and record, certify, and publish them as part of the delinquent list. (R. S. Sec. 2868.)

List and affidavit sent to auditor of state.

SEC. 5710. The county auditor shall send, by mail, to the auditor of state, one paper containing a list of delinquent and forfeited lands, and a copy of the account of the printer, as sworn to by him and allowed by the auditor. (R. S. Sec. 2869.)

This section is mandatory, and failure to comply therewith invalidates subsequent proceedings and the tax sale based thereon: *Rhodes v. Gunn*, 35 O. S. 395.

Sale of delinquent lands.

SEC. 5711. The county treasurer or his deputy shall attend at the court house in the county, on the second Tuesday in February, in conformity with the notice prescribed in the first section of this chapter, and at and after the hour of ten in the forenoon, offer for sale, separately, each tract of land, city or town lot, or part of lot, contained in such advertisement, on which the taxes and penalty have not been paid. The person or persons offering at the sale to pay the taxes and penalty charged on such land, lot or part of lot, for the least quantity thereof, shall be the purchaser or purchasers of such quantity. The treasurer shall continue such sale from day to day until each of such tracts, lots or parts of lots have been sold or offered for sale. (R. S. Sec. 2870.)

The duplicate which is delivered to the treasurer has the effect of an execution, and he may sell lands upon which taxes and assessments have been levied on the duplicate. If, however, such sale is inequitable or unjust, equity may enjoin the same: *Stone v. Viele*, 38 O. S. 314.

If a number of lots are listed by number, and they are assessed as one entire tract, a separate sale of each lot is invalid: *Wiley v. Scoville*, 9 O. 43.

A tax sale is rendered void by collusion between the bidders thereat: *Dudley v. Little*, 2 O. 504.

The provisions of the statute with reference to the date of the sale must be complied with: *Mathers v. Lewis*, 18 O. C. C. 134, 9 O. C. D. 873.

How to proceed if purchaser fails to pay.

SEC. 5712. The person or persons purchasing such tract of land or town lot, or any part thereof, shall forthwith pay to the treasurer the amount of taxes and penalty charged thereon. On failure so to do, the treasurer shall forthwith offer said land or town lot again for sale, in like manner as if no such sale had been made. The person so failing to make payment shall forfeit and pay twenty-five per cent. on the amount of the tax and penalty to be recovered by a civil action, in the name of the treasurer, for the use of the county, before any justice of the peace or court having jurisdiction thereof. (R. S. Sec. 2871.)

County auditor or deputy to attend sales of delinquent lands.

SEC. 5713. The county auditor, or his deputy, shall attend all such sales of delinquent lands and lots, made by the treasurer of his county, and make a record thereof in a substantial book. He shall describe therein the several tracts of land and lots sold at the sale, as described in the advertisement aforesaid, and state how much of each tract of land or lot was sold, and to whom sold. If a tract or lot remains unsold for want of bidders, he shall so enter it in a substantial book kept for that purpose in the county auditor's office, to be designated as "the forfeited land record" of said county. (R. S. Sec. 2872.)

The books of the county auditor kept in compliance with the terms of this section and certified copies therefrom are evidence: *Sheldon v. Coates*, 10 O. 278; *Thevenin v. Slocum*, 16 O. 519.

Failure to comply with the provisions of this section renders invalid the subsequent proceedings and the tax sale based thereon: *Magruder v. Esmay*, 35 O. S. 233.

Copy of record, of sales forwarded to auditor of state.

SEC. 5714. The county auditor shall make and certify a copy of all lands forfeited at each annual delinquent tax-sale, and forward it to the auditor of state each year at the time of making the settlement with the county treasurer, next after such sale. (R. S. Sec. 2872.)

Certificate of purchase of delinquent lands.

SEC. 5715. The county auditor shall make and deliver to the purchaser of land or lots, sold for delinquent taxes as aforesaid, a certificate of purchase, therein describing the land or lots so sold, as described in the tax duplicate, and stating therein the amount of taxes, and penalty for which they were sold. If only a part of a tract is sold, such certificate shall specify the quantity sold, and be directed to the county surveyor, who when requested by the purchaser, his assignee, or heirs, shall lay off, by metes and bounds, in a square, as near as practicable, at the most north-westerly corner of the tract from which the sale was made, the quantity so sold. (R. S. Sec. 2873.)

Under a former statute, which provided for the sale of land by the sheriff, a certificate signed by the sheriff as collector, and not as sheriff, was valid: *Sheldon v. Coates*, 10 O. 278.

Upon the death of the holder of the certificate of purchase, such certificate passes to his heirs: *Rice v. White*, 8 O. 216.

Duty of county surveyor under such certificate.

SEC. 5716. If the sale is made from an inlot or outlot, in a city or village, or from any particular part thereof, the county surveyor shall lay off the part, or portion sold, so that it shall include the most north-westerly corner, and when there is not such north-westerly corner then the most northerly corner shall take precedence as the point where the description shall begin, and it shall extend from the main or principal street, road, or alley which may be the most convenient front to such lot, to the rear of the lot, and bound it by lines as nearly parallel with the outlines of such lot as practicable. (R. S. Sec. 2873.)

When survey and deeds shall be made.

SEC. 5717. No deed shall be made by the county auditor for any land or lot so sold for taxes, until the expiration of two years from and after such sale. The survey thereof required by the certificate of purchase shall not be made until the expiration of that time. (R. S. Sec. 2874.)

Certificate assignable.

SEC. 5718. An assignment of such certificate of purchase shall vest in the assignee or his legal representatives all the right and title of the original purchaser. (R. S. Sec. 2875.)

A sale of land at a delinquent tax sale does not vest in the holder of a certificate of purchase at such sale the title to the property so sold, but the holder of such certificate acquires a right to be invested with the title to such land at the expiration of two years from the sale if not redeemed: *State, ex rel., v. Godfrey*, 62 O. S. 18.

When auditor to make deeds.

SEC. 5719. After the lapse of two years from the time of such sale for taxes, if the land or lot so sold has not been redeemed, the county auditor, on request and production of the certificate of purchase, and in case of the sale of part only of a tract of land or lot, on production of the county surveyor's return of a survey, if he deems such survey necessary, in conformity with the requisitions of such certificate, shall execute and deliver to the purchaser, his heirs, or assignee, a deed of conveyance for the tract of land or town lot, or such part thereof as have been sold as aforesaid. (R. S. Sec. 2876.)

The statute of limitations begins to run against the purchaser from the day that he was entitled to present his certificate to the county auditor and receive a deed under this section; that is, it begins to run two years from date of the sale: *Wolcott v. Holland*, 5 O. C. C. (N. S.) 604, 17 O. C. D. 71.

When different tracts sold to one purchaser, auditor to make one deed.

SEC. 5720. When two or more parcels of the same tract or lot of land are sold for the non-payment of taxes, to the same purchaser or purchasers, the county auditor, on production of the certificates of the purchaser, or the county surveyor's return of surveys thereof, in conformity with said certificates, when such surveys are required, shall execute and deliver one deed of conveyance of the several parcels so sold, to the purchaser or purchasers, his or their heirs or assigns, such deed so executed or delivered shall vest in the grantee or grantees, his or their heirs or assigns, a like title, both in law and equity, as if the several deeds for each parcel so sold had been executed. (R. S. Sec. 2876.)

Title by deed and its effect as evidence.

SEC. 5721. The deed so made by the county auditor shall vest in the grantee, his heirs and assigns, a good and valid title, both in law and equity, and shall be prima facie evidence of a good and valid title in such grantee, his heirs and assigns. (R. S. Sec. 2877.)

As to effect of deed under sale of forfeited lands, see G. C. § 5762.

A deed made in compliance with this section and under proceedings which are in compliance with the preceding sections extinguishes all estates, titles, interests and liens and passes to the grantee an estate in fee simple free from all incumbrances and liens of every sort: *Gwynne v. Neiswanger*, 20 O. 556; *Jones v. Devore*, 8 O. S. 430; *Kahle v. Nisley*, 74 O. S. 328.

Such a sale extinguishes dower, *Jones v. Devore*, 8 O. S. 430, and prior tax title, *Kahle v. Nisley*, 74 O. S. 328, and outstanding equitable interest, *Rennick v. Wallace*, 8 O. 539; *Gwynne v. Neiswanger*, 20 O. 556.

When survey of land sold for taxes dispensed with.

SEC. 5722. When the whole of a tract of land has been sold for non-payment of taxes, in different parcels to different purchasers, and the certificates of the sale of all of such different parcels comes into the possession of one of said purchasers or one assignee of the purchasers, the county auditor of the proper county may dispense with the survey of the different parcels, and make, execute and deliver one deed of conveyance for the whole of the tract to such single purchaser or assignee. Such deed so executed and delivered shall vest in the grantee, his or her heirs or assigns, a like title, both in law and equity, as if separate deeds for each parcel of such tract so sold had been made after and upon the proper surveys heretofore required to be made in conformity with law. (R. S. Sec. 2878.)

Purchaser of the interest of joint tenant, etc., to hold in common.

SEC. 5723. The purchaser, at a sale of lands or lots for taxes, of the interest of a joint tenant, tenant in common, or co-parcener, or of a part or portion of such interest, on obtaining the deed from the auditor for the part or portion so by him purchased shall hold it as a tenant in common with the other owner or owners of such land or lot, and be entitled to all the privileges of a tenant in common until legal partition of such land or lot is made. (R. S. Sec. 2879.)

Lien of tax purchaser, etc., if sale invalid.

SEC. 5724. Upon the sale of land or town lots for delinquent taxes, the lien which the state has thereon for taxes then due shall be transferred to the purchaser at such sale. If such sale should be invalid on account of irregularity in the proceedings of an officer, having a duty to perform in relation thereto, the purchaser at such sale shall be entitled to receive, from the owner of such land or lot, the amount of taxes, interest, and penalty legally due thereon at the time of sale, with interest thereon from the time of payment thereof, and the amount of taxes paid thereon by the purchaser subsequent to such sale. Such land or lot shall be bound for the payment thereof. (R. S. Sec. 2880.)

If a homestead has been set off in certain real property, the son of the owner thereof who is under no obligation to pay taxes upon such premises, who purchases such premises at a tax sale and obtains a tax deed thereon, falls within the provisions of this section. If his title under such sale proves to be invalid he should be subrogated to the lien of the estate for the amount paid at the tax sale, the taxes subsequently paid and interest at six percentum from the time that such payment was made: *Allen v. Russell*, 59 O. S. 137.

If the sale has been made on a day other than that prescribed by law, this is error which comes within this section: *Mathers v. Bull*, 6 O. N. P. 45, 9 O. D. (N.P.) 408.

If the number of a lot is properly charged in the name of the owner, but there is an error of description as to the first name of the owner of the subdivision in which such lot is situated, such an error destroys the effectiveness of the sale and deed, and recovery can be had under this section: *Von Seggern v. Meifeld*, 1 O. N. P. (N.S.) 213, 15 O. D. (N.P.) 390.

If a judgment creditor has a lien upon land which has been sold for taxes, he cannot maintain a suit in equity to set aside the tax sale as invalid unless he first refunds the amount of the taxes and interest or offers so to do: *Gillett v. Webster*, 15 O. 623.

The purchaser at an invalid tax sale may recover the legal taxes, together with the interest and penalty legally due thereon, which he has paid, and the legal taxes which he has subsequently paid, together with interest thereon, but he cannot recover illegal taxes which he has paid nor can he recover interest or penalty thereon: *Younglove v. Hackman*, 43 O. S. 69.

The doctrine of *lis pendens* does not apply to sales of land for taxes. By virtue of G. C. § 5672, the lien of the state for taxes is paramount to all other liens, and inasmuch as by force of this section, the lien of the state is transferred to the purchaser at a tax sale, the purchaser's claim upon such lien is not affected by the fact that at the time of the sale a suit is pending to foreclose and extinguish the title of the owner to which suit the purchaser is not a party: *Trust Co. v. Root*, 72 O. S. 535.

In an action to enforce the lien herein provided for, for the benefit of the purchaser of land at an invalid tax sale, the statute of limitations is a valid defense and may be interposed, and the six year period governs in such cases: *Wiltse v. McClymon*, 11 O. C. C. (N.S.) 509, 20 O. C. D. 241.

Remedy of purchaser, if sale invalid.

SEC. 11703. Upon the sale of property on execution, if the title of the purchaser is invalid by reason of a defect in the proceedings, he may be subrogated to the right of the creditor against the debtor, to the extent of the money paid and applied to the debtor's benefit, and, to the same extent have a lien on the property sold, as against all persons, except bona fide purchasers without notice. This section shall not require the creditor to refund the purchase money, by reason of the invalidity of such sales. (R. S. Sec. 5410.)

Remedy in other cases of invalid sales.

SEC. 11704. The next preceding section shall apply also, to sales by order of court, sales by executors, administrators, guardians, and assignees, and to sales for taxes. (R. S. Sec. 5411.)

When sale not invalid.

SEC. 5725. No sale of land or town lots for delinquent taxes shall be invalid on account of its having been charged on the duplicate in name other than that of the rightful owner, if, in other respects, it is sufficiently described on the duplicate, and the taxes for which it is sold were due and unpaid at the time of such sale. (R. S. Sec. 2881.)

The tax duplicate must contain a description of the land which is at least so definite that it is possible for such description to identify the land which is subsequently sold for taxes, in order to render valid a sale based on taxes appearing on such duplicate: *Massie v. Long*, 2 O. 287; *Lafferty v. Byers*, 5 O. 458; *Treon v. Emerick*, 6 O. 391; *Perkins v. Dibble*, 10 O. 434; *Burchard v. Hubbard*, 11 O. 316; *Hannel v. Smith*, 15 O. 134; *Turney v. Yeoman*, 16 O. 24; *Stewart v. Aten*, 5 O. S. 257; *Winkler v. Higgins*, 9 O. S. 599; *Humphries v. Huffman*, 33 O. S. 395; *Waltz v. Hirtz*, 11 Dec. Rep. 14, 24 Bull. 110.

A person attacking a tax title must show an irregularity invalidating it, and if the only defect is a vague description, and the present holder has been in possession under it for over fifty years, it is too late. *Brewing Co. v. Hardway*, 17 C. C. (N. S.) 475. (Affirmed without report, 92 O. S. O.O.O.)

Deeds made when certificates lost or destroyed.

SEC. 5726. If it is shown to the county auditor that a certificate issued to a purchaser of land for taxes, under any law, has been mislaid, destroyed, or lost, and no deed has been executed therefor, the auditor, being fully satisfied from evidence of the existence and loss of such certificate, shall make and execute to such purchaser, a good and sufficient deed of conveyance for such tract or tracts of land. Such deed shall be as good and valid in law, to all intents and purposes, as if the certificate had not been mislaid, lost or destroyed. (R. S. Sec. 2883.)

When auditor to keep minutes of deeds made.

SEC. 5727. The county auditor shall enter, in a book kept in his office, a minute of all deeds by him made for lands and town lots, or parts thereof, sold for taxes, therein naming the person who stood charged with the taxes at the time of such sale, the date of the sale, the name of the purchaser, a brief description of the land or lot so sold, the quantity sold, the amount for which it was sold, the name of the grantee in the deed, and the date of its execution. (R. S. Sec. 2884.)

Same as to redemption of lands.

SEC. 5728. When a tract or portion of land, town lot or part thereof, sold for taxes, is redeemed, the county auditor shall insert a minute of such redemption, the date thereof, and by whom made, on his record of sales of land for delinquent taxes, and sign it officially. (R. S. Sec. 2885.)

Sale of land for taxes paid, void.

SEC. 5729. If the taxes charged on land or lots is regularly paid, and such land erroneously returned delinquent, and sold for taxes, the sale thereof shall be void. The money paid by the purchaser at such void sale shall be refunded to him out of the county treasury, on the order of the county auditor, and so much of the tax as has been paid into the state treasury shall be refunded to the county treasury. The county auditor shall retain such amount from his next semi-annual settlement, and charge the state treasury therewith in his settlement. (R. S. Sec. 2886.)

When auditor may make deeds for lands in other counties.

SEC. 5730. The county auditor of the county in which land or town lots have been sold for taxes, under this chapter, shall execute the proper deed therefor to the person or persons entitled to receive it, whether the land or town lot, at the time of the execution of the deed, continues to be within the county or not, in like manner as though the land or town lot still remained within the limits thereof. (R. S. Sec. 2887.)

Auditor to transfer land sold for taxes.

SEC. 5731. A county auditor delivering a certificate of purchase of forfeited lands, or delinquent lands sold for taxes, shall forthwith transfer it on his duplicate, into the name of the purchaser, charging therefor the sum of ten cents, which shall be considered part of the expenses of the sale. If an auditor neglects to make such transfer, he shall be liable to action by any person injured thereby as for a neglect of official duty. (R. S. Sec. 2888.)

This section does not conflict with G. C. § 2573, and where a transfer has been made under this section, and prior to the expiration of the two years, the owner of such realty gives a mortgage thereon, upon which proceedings in foreclosure are brought as a result of which the land is sold, the purchaser can compel the auditor to transfer the land upon the record in compliance with G. C. § 2573; since the transfer made under this section does not transfer the title; but merely gives to the purchaser the right to secure a title at the end of the two-year period, if the land has not been redeemed in the meantime: *State, ex rel., v. Godfrey*, 62 O. S. 18.

CHAPTER FORTY-TWO.

DELINQUENT LANDS. (Continued.)

REDEMPTION OF DELINQUENT LANDS.

SECTION

5732. Application for redemption to be made to auditor.
5733. Lands sold for taxes may be redeemed within two years.
5734. How lands may be redeemed,
5735. Same.
5736. Joint owner, etc., may redeem his proportion.
5737. Proceedings etc., of party on application to redeem.
5738. Tax certificate shall be surrendered, when.

SECTION

5739. When auditor to note on certificate that deposit has not been made.
5740. Auditor shall note redemption on record.
5741. Tax purchaser's improvements; how paid for, etc.
5742. Sale, etc., for taxes of lands, etc., under permanent lease.
5743. Land returned delinquent, upon which taxes were paid.
10960. Release of ward's tax title by guardian.

Application for redemption to be made to auditor.

SEC. 5732. Applications for the redemption of lands or town lots sold for taxes shall be made to the county auditor of the county in which such lands or town lots are situated. (R. S. Sec. 2889.)

If land has been sold for delinquent taxes, the owner thereof must first apply to the county auditor for the redemption of such land before seeking relief in a court of equity: Trustees v. Thoman, 51 O. S. 285.

Lands sold for taxes may be redeemed within two years.

SEC. 5733. All lands and town lots sold for taxes at a delinquent sale, may be redeemed at any time within two years from and after the sale thereof. All lands belonging to minors, insane persons or persons imprisoned which have been sold for taxes, may be redeemed at any time within two years from and after the expiration of such disability. (R. S. Sec. 2890.)

If land is forfeited for the nonpayment of taxes during the lifetime of the owner, and he dies before the sale thereof, leaving heirs who are under age, such heirs may redeem within two years after the sale and without paying for improvements made on such land: Reynolds v. Lieper's Heirs, 7 O. (pt. 1) 17.

How lands may be redeemed.

SEC. 5734. A person desiring to redeem land or town lots sold at a delinquent tax sale within one year after the sale thereof, or within one year after the expiration of any of the disabilities named in the next preceding section, may deposit with the county treasurer, upon the certificate of the county auditor, particularly describing and specifying such land or town lot, an amount of money equal to that for which such land or town lot was sold, and the taxes subsequently paid thereon by the purchaser, or those claiming under him, together with interest, and fifteen per cent. penalty on the whole amount paid, including costs, and one dollar to pay the expenses of advertising as hereinafter provided. (R. S. Sec. 2891.)

The term "costs" in this section does not include attorney's fees: Savings Co. v. Sennt, 4 O. N. P. 346, 7 O. D. (N. P.) 224.

Same.

SEC. 5735. A person desiring to redeem any land or town lot sold at a delinquent tax sale, after the expiration of one year from the sale thereof, and within the time limited by law for such redemption, may deposit with the county treasurer, upon the certificate of the county auditor, particularly describing and specifying such land or town lot, an amount of money equal to that for which such land or town lot was sold, and the taxes subsequently paid thereon by such purchaser, or those claiming under him, together with interest and twenty-five per cent. penalty on the whole amount paid, including costs, and one dollar to pay the expense of advertising, as hereinafter provided. (R. S. Sec. 2891.)

After the expiration of two years, the owner of realty sold for taxes has no right to redeem from such sales by depositing the necessary amount with the county treasurer under this section: Steel v. Pogue, 15 O. C. C. 149, 8 O. C. D. 255.

Joint owner, etc., may redeem his proportion.

SEC. 5736. When joint tenants, tenants in common, or co-parceners, are entitled to redeem land, or town lots sold for taxes, and a person, so entitled, refuses or neglects to join in the application for the certificate of redemption, or, from any cause, can not be joined in such application, the auditor may entertain the application of so many of such persons as join therein, and may make a certificate for the redemption of such proportion of the land or lot as the person or persons making such application are entitled to redeem. (R. S. Sec. 2892.)

Proceedings of party, etc., on application to redeem.

SEC. 5737. Upon the presentation of such certificate of the county auditor to the county treasurer, for the redemption of land or town lots sold for taxes, and upon the payment of the money into the county treasury, the county treasurer shall give the person or persons making such payment, duplicate receipts therefor, describing the property of the land or town lot as it is described in or upon the certificate of the auditor. One of such receipts shall be registered by the treasurer, and forthwith filed with the county auditor, by the party receiving it. Thereupon the auditor shall forthwith cancel the sale, and transfer the property, land, or town lot to the proper party; and such receipt, when so filed, shall operate as an extinguishment of all rights, either in law or equity, conferred in any manner by such sale. The auditor shall publish a notice of such redemption in the newspaper in which the advertisement of sale was published, for the term of three weeks, either in a weekly or a daily paper, once in each week, at an expense not exceeding one dollar. (R. S. Sec. 2893.)

Tax certificate shall be surrendered, when.

SEC. 5738. Upon the demand of the purchaser, or his legal representative, and the surrender of the tax certificate, and upon the payment of the auditor's fees, the county auditor shall draw his warrant upon the county treasurer in favor of such purchaser, or his legal representative, for the amount of money so deposited as hereinbefore provided, with the treasurer. (R. S. Sec. 2894. 102 v. 277.)

When auditor to note on certificate that deposit has not been made.

SEC. 5739. When such deposit has not been made within two years from the time of the sale of lands or lots sold for delinquent taxes, or within six months from that of lots or lands forfeited to the state for non-payment of taxes, the auditor, at the request of the person presenting such certificate, shall note such fact upon the back of said certificate, and sign his name thereto officially. (R. S. Sec. 2895.)

Auditor shall note redemption on record.

SEC. 5740. When a tract or portion of land or town lot or part thereof is redeemed, or a deposit made, as provided in this chapter, the auditor of the county, shall note such redemption or deposit, the date thereof, and by whom made, on his record of tax sales, and sign his name thereto, officially. (R. S. Sec. 2895.)

Tax purchaser's improvements; how paid for, etc.

SEC. 5741. If a lasting and valuable improvement has been made by the purchaser at a sale for taxes, or by a person claiming under him, on any land or town lot, for which a certificate of redemption shall be made, the premises shall not be restored to the person obtaining such order, until he has paid or tendered to the adverse party the value of such improvement. If the parties can not agree on the value thereof, like proceedings shall be had in relation thereto, as are prescribed by law, for the relief of occupying claimants of land. No purchaser of any land or town lot, sold for taxes, nor any person claiming under him, shall be entitled to compensation for any improvements which he makes on such land or town lot, within two years from and after the sale thereof. (R. S. Sec. 2896.)

If land is forfeited during the lifetime of the owner, but not sold until after his death, and he dies leaving heirs who are under age, it is held by force of G. C. § 5733, that such minors may redeem within two years after the sale without paying for improvements: *Reynolds v. Lieper*, 7 O. (pt. 1) 17.

Sale, etc., for taxes of lands, etc., under permanent lease.

SEC. 5742. When lands or lots, liable to taxation, are held upon permanent lease, and, with the improvements thereon, are taxed in the name of the lessee, if they become delinquent, and are brought to sale by the county auditor, for the non-payment of the tax, interest, and penalty due thereon, such sale shall be confined to the right of the lessee on

the premises and the improvements thereon, if such right is sufficient to meet the tax, interest, and penalty, so assessed and due. This section shall not require such lands or lots to be differently described on the duplicate, advertised in a separate or distinct form, or in any other manner than other lands and lots, under this chapter. (R. S. Sec. 2897.)

This statute was intended to protect the interest of the owner of the fee, but only in case the interest of the lessee was sufficient to pay the taxes. If the interest of the lessee was not sufficient to pay the taxes, the interest of the owner of the fee may be sold to make up the deficiency: *St. Bernard v. Kemper*, 60 O. S. 244.

If property has been conveyed by a perpetual leasehold, and the lessee is not bound to pay the taxes, he is nevertheless bound to pay such proportion of the taxes as are due to the increase in value caused by valuable improvements erected by him upon the realty thus leased: *Joslyn v. Spellman*, 9 Dec. Rep. 258, 12 Bull. 7.

Land returned delinquent, upon which taxes were paid.

SEC. 5743. When any tract of land or town lot is returned delinquent for the non-payment of taxes, and placed on the duplicate of the succeeding year, and the owner or person, liable to pay taxes therefor, produces the receipt of the treasurer for such taxes of the preceding year, the county auditor or treasurer shall not make a deduction from the duplicate of such tax, interest, or penalty, but it shall be chargeable to the treasurer, as if such receipt had not been produced. The treasurer shall receive such receipt in discharge of the tax for the year that is returned delinquent, with the interest and penalty; and the auditor of the county shall credit such treasurer with the amount, and shall forthwith collect such tax, interest, or penalty from the treasurer who gave such receipt. The prosecuting attorney shall attend to any such suit so commenced by the auditor. (R. S. Sec. 2898.)

Release of ward's tax title by guardian.

SEC. 10960. When a minor has title to real estate by tax title only, if he deems it advisable, the guardian, by deed of release and quit claim may convey such minor's interest or title to the person entitled to redeem such real estate, upon receiving from him the amount paid for such tax title with the penalty and interest allowed by law in that behalf. If the guardian tenders such deed to the person entitled to redeem such real estate and he refuses to accept it and so pay, he shall not recover costs in any proceeding thereafter instituted to redeem or recover such real estate. (R. S. Sec. 6294.)

CHAPTER FORTY-THREE.

FORFEITED LANDS.

SECTION

5744. Lands not sold forfeited to the state.
5745. Auditor to return list of same to the auditor of state.
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5747. Treasurer charged with moneys received on forfeited lands; report thereon to auditor of state.

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Lands not sold forfeited to the state.

SEC. 5744. Every tract of land and town lot offered for sale by the treasurer, as provided in the next preceding chapter, and not sold for want of bidders, shall be forfeited to the state. Thenceforth all the right, title, claim, and interest of the former owner or owners thereof, shall be considered as transferred to, and vested in, the state, to be disposed of as the general assembly may direct. (R. S. Sec. 2899.)

Lands cannot be claimed as forfeited to the state, for the non-payment of taxes, without a strict compliance with the statute authorizing the forfeiture: Woodward v. Sloan, 27 O. S. 592.

The forfeiture of land to the state for nonpayment of taxes, does not divest the former proprietor of title, so as to prevent him from maintaining an action of ejectment against one in possession not claiming title under the state: Thevenin v. Slocum, 16 O. 519.

The forfeiture herein provided for vests the title in the state for the purpose of security for the amount of taxes due and owing, and not for any other purpose: Thevenin v. Slocum, 16 O. 519.

Where, under this section, lands have been duly forfeited to the state for the nonpayment of taxes and penalties, a valid sale and conveyance of such lands by the county auditor, extinguishes all previous titles thereto, either legal or equitable, and invests the purchaser with a new and perfect title to said lands, discharged from all previous liens and incumbrances: Kahle v. Nisley, 74 O. S. 328.

This and the following sections have no application to lands which are sold at delinquent tax sales; but only to the forfeiture of lands which have been offered for sale at delinquent tax sales and have not been sold for want of bidders: State, ex rel., v. Godfrey, 62 O. S. 18.

Auditor to return list of same to the auditor of state.

SEC. 5745. The county auditor, annually, shall return, by the county treasurer, a separate list of all lands or town lots so forfeited, with the description thereof, and the amount of tax due thereon, to the auditor of state, and all such lands or lots shall be preserved on the duplicates until sold or redeemed, and the taxes thereon regularly assessed, in the name of the state. Such taxes shall be returned, annually, by the county treasurer as delinquencies, and credited to him as other delinquencies, in his settlement. (R. S. Sec. 2899.)

How forfeited lands redeemed.

SEC. 5746. If the former owner of a tract of land or town lot, which has been so forfeited, at any time before the state has disposed of such land or lot, shall pay into the treasury of the county in which such land or lot is situated, or into the state treasury, all the taxes and penalties due thereon at the time of such forfeiture, with the taxes and

penalties which have since accrued thereon, as ascertained and certified by the auditor, the state shall relinquish to such former owner or owners, all claim to such land or lot. The county auditor shall then re-enter such land or lot on his tax-list, with the name of the proper owner. (R. S. Sec. 2900.)

If the owner of land dies after the land is forfeited and before it is sold, leaving heirs who are under age, such heirs may redeem: *Reynolds v. Lieper's Heirs*, 7 O. (pt. 1) 17.

If the heirs of a former owner redeem after his death, the land having been forfeited during his lifetime, such forfeiture bars the dower of the widow, and such subsequent redemption does not restore her right of dower to her: *Tullis v. Pierano*, 9 O. C. C. 647, 9 O. C. D. 103 [affirmed, without report, *Tullis v. Pierano*, 57 S. S. 661].

Treasurer charged with moneys received on forfeited lands; report thereon to auditor of state.

SEC. 5747. The county auditor shall charge the county treasurer with all moneys by him received under the provisions of the next preceding section and make out an annual list of lands and town lots, upon which payments have been so made, specifying therein the proportion of such money belonging to the state. He shall forward the list to the auditor of state, by the county treasurer, at the time of paying over the state tax, and the county treasurer shall pay into the state treasury the state's proportion of such money, at the time he pays the other taxes due the state. (R. S. Sec. 2901.)

SALE OF FORFEITED LANDS.

Lands, etc., forfeited to the state to be sold.

SEC. 5748. The lands, inlots, outlots, and parts of lots, which are forfeited to the state for the non-payment of taxes, or otherwise, shall be sold and disposed of by the state agreeably to the provisions of this chapter. (R. S. Sec. 2902.)

The statutes on the subject of the sale of land which is forfeited to the state for non-payment of taxes, is a subject of a general nature; a statute upon that subject must have a uniform operation throughout the state: *Kattenhorn v. Dehner*, 6 O. L. R. 610, 64 Bull. 254. If land has been forfeited for non-payment of taxes, a subsequent excessive charge does not avoid such forfeiture nor does it defeat the title of the purchaser at a subsequent tax sale: *Lessee of Winder v. Sterling*, 7 O. (pt. 2) 190.

A sale of forfeited lands is not valid unless such lands have previously been listed for taxation by some proper description: *Hannel v. Smith*, 16 O. 134.

Proceedings as to lands, etc., now forfeited.

SEC. 5749. The auditor of state shall cause all lands, inlots, outlots, and parts of lots, forfeited to the state for the non-payment of taxes, and which have not since been purchased by the original owner or owners, or any other person, to be entered in a book to be provided for that purpose. Such entry shall set forth the name, by township and county as in case of other lands. (R. S. Sec. 2902.)

The sale of forfeited lands.

SEC. 5750. The auditor of state, annually, shall enter in the book provided for in the next preceding section, all lands forfeited to the state for the non-payment of taxes. The several county auditors, once in two years, between the first Monday of September and the first day of October, shall make a list of all forfeited lands and lots, and forward it to the auditor of state, who, after comparing it with the record of forfeited lands in his office, and correcting any errors or omissions therein, shall return it to the several county auditors, who shall sell the forfeited lands and lots, agreeably to the provisions of this chapter. Lands and lots so forfeited, which, for any cause have not been, so offered, shall be offered for sale under the provisions of this chapter, and if not sold for want of bidders, shall be again advertised and offered for sale by the county auditor, at the next subsequent sales by him made, under this chapter, until such lands and lots are sold. (R. S. Sec. 2903.)

Duty of county auditor as to sale.

SEC. 5751. The auditor of each county on receiving from the auditor of state such list of lands within his county, if the tax and penalties due thereon have not been paid on or before the fifteenth day of October next ensuing, shall forthwith cause notice thereof to be advertised four consecutive weeks in a newspaper in the English language printed in his county and in a newspaper of the German language if there be such printed, published and of general circulation in his county. Such notice shall describe the lands in the manner they are described on the list furnished by the auditor of state, and state that if the tax and penalties charged on said list are not paid into the county treasury and the treasurer's receipt produced therefor before the time specified in this chapter for the sale of said lands, which day shall be named therein, that each tract, so delinquent, on which

the taxes and penalties remain unpaid will be offered for sale on the second Monday of December thereafter, at the court-house in such county, in order to satisfy such taxes and penalties, and that such sale will continue from day to day until each of such tracts are sold or offered for sale. (R. S. Sec. 2904.)

Sale.

SEC. 5752. The auditor in each county, on the second Monday of December shall attend at the court-house, and sell the whole of each tract of land as contained in the list, heretofore provided for, at public auction, to the highest bidder. He shall offer each tract separately, beginning with the first tract contained in the list and continue on through it, until each tract contained therein is sold. The county auditor may adjourn the sale from day to day until he has disposed of or offered for sale each tract of land specified in the notice. This section shall not prevent the auditor from offering a tract of land two or more times at the same sale. (R. S. Sec. 2904.)

Publication of notice of list and sale of forfeited lands; sale of lands advertised.

SEC. 5753. If the county auditor, by inadvertence or mistake, has omitted to cause the list of forfeited lands of the county, with notice of the sale thereof, to be published as provided in this chapter, and the taxes and penalty with which the lands and town lots stand charged upon the forfeited list have not been paid before the first day of March of the next succeeding year after securing the list from the auditor of state, he forthwith shall cause the list with notice of the sale thereof, to be published as provided in section fifty-seven hundred and fifty-one. Such notice shall specify that said sale will begin on the second Monday of April next, and the county auditor, beginning with such day, shall sell the whole of each tract of land as contained in the list, in the manner provided in the next preceding section. (R. S. Sec. 2904a.)

The fact that the auditor has not advertised the sale because of the press of business in his office, gives no authority for postponing the sale, under this section, since such failure is not a case of inadvertence or mistake: *Mathers v. Lewis*, 18 O. C. C. 134, 9 O. C. D. 873.

Form of notice of sale.

SEC. 5754. The notice of sale prescribed in section fifty-seven hundred and fifty-one, shall be in substance as follows:

FORFEITED LAND SALE.

The lands, lots, and parts of lots, in the county of, forfeited to the state for the non-payment of taxes, together with the taxes, and penalty charged thereon, agreeably to law, are contained and described in the following list, viz.:

(Here insert the list.)

And notice is hereby given, to all concerned, that if the taxes and penalties charged on said list are not paid into the county treasury, and the treasurer's receipt produced therefor, before the second Monday in December next, each tract, lot, and part of lot, so delinquent, on which the taxes and penalties remain unpaid, will be offered for sale on the second Monday in December next, at the court-house in said county, in order to satisfy such taxes and penalties, and that said sale will be adjourned from day to day until each tract, lot, and part of lot of land, specified in said list has been disposed of, or offered for sale.

.....
County auditor.

.....
(Date of notice.)

(R. S. Sec. 2905.)

Proceedings if land not sold.

SEC. 5755. If a tract or parcel of land does not sell at such public sale for an amount sufficient to pay the taxes and penalty which stand against it, the auditor shall return it as unsold, to be retained upon the list of forfeited lands, to be offered for sale the next succeeding sale as other forfeited lands. If such tract or parcel of land is offered for sale at two succeeding sales, and still remain unsold, the commissioners of the county in which it is situated, at their regular annual session in June preceding the next regular sale, if in their opinion it is of less value than the amount of taxes and penalties due upon it, having fixed a minimum price therefor, may order the auditor of the county to offer it for sale at the next regular sale of forfeited lands, and sell it to the highest and best bidder therefor, at not less than said minimum price, irrespective of the amount of taxes

and penalty due upon it. Such sale shall convey the title to the said tract or parcel of land, divested of all liability for any arrearages of taxes or penalty which remain after applying the amount thereon for which it was sold. (R. S. Sec. 2906.)

Forfeited and sold lands may be redeemed.

SEC. 5756. When a tract or parcel of land is sold, under the provisions of this chapter, at forfeited sale, any person, desiring to do so, may redeem it, at any time within six months from the sale thereof, by depositing with the county treasurer as provided in the next preceding chapter of this title, the amount of such sale with fifty per cent penalty thereon, and paying all other expenses incidental to, and arising from the sale. (R. S. Sec. 2907.)

When excess paid to owner.

SEC. 5757. If any of such forfeited lands are sold for a greater sum than the amount of such tax, interest, penalty, and costs, the county auditor shall charge the county treasurer separately in each case, in the name of the supposed owner, with the excess above such amount. The treasurer shall retain such excess in the treasury for the proper owner of the forfeited lands, and upon demand by such owner, within six years from the day of sale, shall pay the excess to him. (R. S. Sec. 2907.)

Procedure if doubtful as to the owner.

SEC. 5758. If the county treasurer, upon such demand, is not fully satisfied as to the right of the person demanding, to receive it, if there are several different claimants, he shall commence a civil action by filing a petition of interpleader, in the court of common pleas of the county where the land was sold, wherein he shall make the person or persons claiming the excess, and the state, defendants, and the action shall proceed as other civil actions. The costs of the proceedings shall be paid by the person or persons claiming the excess, as the court shall order. The prosecuting attorney of the county shall attend to the action, in behalf of the treasurer. (R. S. Sec. 2907.)

The provision herein for bringing suit does not make the state sue itself: *Gilbert v. Bank*, 5 O. N. P. (N. S.) 209, 18 O. D. (N. P.) 115.

Taxes computed upon basis of new quadrennial appraisalment.

SEC. 5759. When any lot, outlot or land offered for sale, and not sold for want of bidders, is forfeited to the state of Ohio, for the non-payment of taxes, and has stood on the tax duplicate as forfeited for two years next prior to the time fixed by law for taking a quadrennial appraisalment of the lots, or outlots and real estate of the county, the county auditor, upon application of the owner of such forfeited lot, outlot or land, shall re-adjust the taxes upon such property that may at such quadrennial appraisalment, so be delinquent, and compute such taxes upon the basis of the new quadrennial appraisalment. (R. S. Sec. 2907a.)

This section is held to be unconstitutional in *Lewis v. State*, 72 O. S. 613.

Remittance of difference.

SEC. 5760. In making such re-adjustment, the county auditor shall compute the taxes, upon such lot, outlot or lands, for each year they are unpaid, by computing the amount at the rate for each year upon the new quadrennial valuation. Upon the payment of the taxes so re-adjusted, the auditor shall issue to the owner of such lots, outlots or lands a remitter for the amount of the difference between the delinquent taxes charged thereon and the amount of taxes found to be due thereon under such re-adjustment. (R. S. Sec. 2907a.)

This section is held to be unconstitutional in *Lewis v. State*, 72 O. S. 613.

Compensation of auditor.

SEC. 5761. For making such re-adjustment, the county auditor shall receive from the owner of such lot, outlot or lands, ten cents per year for each lot, outlot or parcel of land, as full compensation for transferring upon his record such lots from the state of Ohio to the owner thereof and for re-adjusting such taxes. (R. S. Sec. 2907b.)

Certificate to purchaser.

SEC. 5762. The county auditor on making a sale of a tract of land to any person, under this chapter, shall give to such purchaser a certificate thereof. If the land so sold is not an entire original tract, and the auditor deems it necessary, such certificate shall be

directed to the county surveyor of the county, requiring him to proceed at the request of the purchaser, his heirs, or assigns, to ascertain the boundaries of the tract of land so purchased, unless it is held in common with some other person. On producing or returning to the county auditor the certificate of sale when the tract sold is an entire original tract, or when the tract of land so sold is held in common with another person, or on producing the plat and certificate of the county surveyor attached to a copy of the certificate of sale, the county auditor, on payment to him by the purchaser, his heirs, or assigns, of the sum of one dollar and twenty-five cents shall execute and deliver to such purchaser, his heirs, or assigns, a deed therefor, in due form, which deed shall be prima facie evidence of title in the purchaser, his heirs, or assigns. (R. S. Sec. 2908.)

The deed given by the auditor for land sold as forfeited land is prima facie evidence of the validity of such proceedings and sale; and may be received in evidence for the purpose of showing title without proof of the preliminary steps leading up to such sale: *Turney v. Yeoman*, 14 O. 207; *Stanbery v. Sillon*, 13 O. S. 571; *Woodward v. Sloan*, 27 O. S. 592; *Heffern v. Hack*, 65 O. S. 164.

Such deed is not conclusively valid; and the original owner of the property may show that the preliminary requirements of the statute have not been complied with; and he must thus show that such sale and deed are invalid: *Turney v. Yeoman*, 16 O. 24; *Woodward v. Sloan*, 27 O. S. 592.

After the property has been sold the county auditor cannot place the Dow tax for the preceding year upon the duplicate as a lien against such property in the hands of the purchaser: *Lohaus v. Haggerty*, 7 O. C. C. 408, 4 O. C. D. 657.

Redemption by minor, etc.

SEC. 5763. If land sold by virtue of this chapter is the property of a person within the age of minority, of unsound mind, or imprisoned, such person may redeem it within the time and in the manner prescribed by the next preceding chapter of this title. (R. S. Sec. 2908.)

Sale void if taxes have been paid.

SEC. 5764. The sale of any tract or lot of land under the provisions of this chapter, on which the taxes have been regularly paid previous to such sale, is void and the purchaser, his heirs, or assigns, on producing the certificate of sale to the auditor of state, shall have his money refunded to him from the state treasury. The state auditor shall pay it out of the money appropriated for refunding taxes twice or improperly paid. (R. S. Sec. 2908.)

Purchasers may have partition.

SEC. 5765. Any person claiming any land, inlot, outlot, or part of lot, by virtue of a sale made under the provisions of this chapter, as tenant in common with any other person or persons, may apply for partition thereof, in like manner as is provided for the partition of real estate. On presenting the county auditor's deed, the court, before which application for such partition is made, shall set off to such person, the land claimed in the deed as his share, in the manner prescribed by law for the partition of estates, in lands, tenements, or hereditaments of joint tenants, tenants in common, and co-parceners. (R. S. Sec. 2909.)

If the tax sale is invalid, the purchaser thereunder cannot have partition under this section: *Turney v. Yeoman*, 16 O. 24.

Purchaser deemed the assignee of the state.

SEC. 5766. The purchaser of such lands, his heirs, or assigns, from the day of such purchase, shall be held in all courts as the assignee of the state of Ohio. The amount of taxes and penalties charged on the land at the time it was sold, with all legal taxes afterward paid thereon by such purchaser, his heirs or assigns, shall be a lien on it, and may be enforced as any other lien. (R. S. Sec. 2910.)

If a sale of forfeited land is valid, it passes to the purchaser a fee simple, free from all incumbrances; and accordingly extinguishes the lien of a former tax sale: *Kahle v. Nisley*, 74 O. S. 328.

A sale of land as forfeited cuts off the right of the widow of a former owner to dower: *Tullis v. Pieranto*, 9 O. C. C. 647, 9 O. C. D. 103 [affirmed, without report, *Tullis v. Pieranto*, 57 O. S. 661].

If land is sold for taxes under an unconstitutional statute, the purchaser acquires a lien for the taxes and interest paid thereon: *Kattenhorn v. Dehner*, 6 O. L. R. 610, 54 Bull. 254.

If a Dow tax has been listed upon the duplicate against the wrong property, and the property which should have been subject thereto is sold, the purchaser takes such property free from the lien of such Dow tax; and such tax cannot subsequently be placed upon the duplicate against the property thus sold: *Lohaus v. Haggerty*, 7 O. C. C. 408, 4 O. C. D. 657.

May recover, if ejected, the taxes, etc.

SEC. 5767. When the claimant of any lands sold, for the non-payment of taxes, under any law of the state, or his heirs or assigns, recover the land sold, as aforesaid, such

claimant, his heirs, or assigns, shall refund to the purchaser, his heirs, or assigns, the amount of taxes and penalties due to the state on the land when sold, with all other taxes paid thereon by such purchaser, his heirs, or assigns, to the time of such recovery, with interest. Such sum shall be paid to such purchaser, entitled thereto, before he shall be evicted or turned out of possession by any claimant so recovering such land. (R. S. Sec. 2910.)

It is not necessary that the owner refund the taxes before he can have judgment in a proceeding in ejectment; but only before process is issued to turn the defendant out. The rents and profits due from the defendant to the owner may be set off against the taxes: *Heffern v. Hack*, 65 O. S. 164.

Where a tax sale proves to be invalid, the purchaser is entitled to receive the legal taxes, including interest and penalty legally thereon paid by him, and the legal taxes subsequently paid by him, with interest from the dates of such payments; but he is not entitled to receive illegal taxes thereon paid by him, or interest or penalty thereon: *Younglove v. Hackman*, 43 O. S. 69.

Auditor of state to keep record and forward list.

SEC. 5768. The auditor of state shall open and keep the records required by this chapter, and send out for sale, in alternate years, the lands and town lots forfeited to the state, and be governed in all things in the future disposition of such lands and lots by the provisions of this chapter. (R. S. Sec. 2911.)

Referred to as showing the legislative intent to make each county a separate district for the collection of taxes upon land situated therein; from which it follows that if a tract of land is divided by a county line, each part to be taxed in the county where it lies, and a sale of the entire tract in one county or proceedings thereunder are invalid as to the entire tract: *Bargar's Lessee v. Jackson*, 9 O. 164.

Lands redeemed transferred on county tax-list.

SEC. 5769. Upon the redemption of such lands or lots, or the sale thereof under the provisions of this title, the county auditor shall transfer them on the tax-list from the state of Ohio to the proper owner or purchaser thereof. For such transfer he shall not be entitled to receive fees. (R. S. Sec. 2911.)

When county auditor to make return of sale.

SEC. 5770. The county auditor, selling forfeited land under the provisions of this chapter, within ten days after such sale, shall make return thereof to the auditor of state. (R. S. Sec. 2912.)

Apportionment on sale of forfeited lands.

SEC. 5771. The county auditors shall apportion to their several funds, and pay over, to the county treasurer of the proper county, the amount of moneys received from the sale of lands and town lots forfeited to the state for the non-payment of taxes. (R. S. Sec. 2913. 102 v. 277.)

Auditor to make deeds for lands heretofore sold for taxes.

SEC. 5772. The auditor of state shall make a deed for any tract of land, or part thereof, that has been sold for taxes, in the manner that sheriffs are authorized to do, by law. To the deed thus made, the auditor shall affix his seal of office, which shall be evidence of the execution of such deed, and it shall have all the force and effect of deeds made by a sheriff. For each deed thus executed he shall be entitled to receive seventy-five cents. (R. S. Sec. 2914.)

How deeds obtained when certificates lost or mislaid.

SEC. 5773. If a certificate has been issued to a purchaser of lands sold, either as delinquent or forfeited for taxes, or has been mislaid, destroyed, or lost, and that fact is shown to the auditor of state or county auditor and no deed or deeds have been executed therefor, the auditor of state or county auditor, as the case may be being fully satisfied, from evidence, of the existence and loss of such certificate or certificates, on application for that purpose, shall make and execute to such purchaser or purchasers, a good and sufficient deed of conveyance for such tract of land. Such deed shall be good and valid in law, to all intents and purposes, as if such certificate had not been mislaid, destroyed or lost. (R. S. Sec. 2915.)

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